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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS — Transmittal No. 2401

Revisions to Tariff F.C.C. No. 15

Competitive Pricing Plan No. 8

MEMORANDUM OPINION AND ORDER

Adopted: September 26, 1990 Released: September 26, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. AT&T Communications (AT&T) filed Transmittal No. 2401 on June 29, 1990. This transmittal introduces AT&T's eighth Competitive Pricing Plan (CPP8) under AT&T Tariff F.C.C. No. 15, scheduled to become effective on September 27, 1990. According to AT&T, CPP8 constitutes a competitive response to an offer made by US Sprint Communications Company Limited Partnership (US Sprint) for provision of telecommunications services to Original Cookie, Inc. (Original Cookie).[1] Petitions against this transmittal were filed by MCI Telecommunications Corp. (MCI), US Sprint, the Competitive Telecommunications Association (CompTel), and the National Telecommunications Network (NTN).[2] For the reasons discussed below, we suspend Transmittal 2401 for the full five-month statutory period.

II. BACKGROUND

2. In the instant transmittal, AT&T seeks to establish a one-time credit of $20,000 to Original Cookie if it purchases additional or new AT&T Software Defined Network (SDN) or MEGACOM 800 service for a term of two years. The credit, contends AT&T, is in response to US Sprint's offer of a $20,000 credit if Original Cookie committed to an 18 month term for US Sprint's Virtual Private Network (VPN), Ultra 800, and FON Card services. AT&T asserts that Original Cookie has told AT&T that it will accept US Sprint's offer unless AT&T provides a similar credit. AT&T Transmittal No. 2401, Description and Justification at 1-2. AT&T states that CPP8 is available to any customer who has received a similar offer from US Sprint. *Id.* at 2.

III. PLEADINGS

A. Petitions

3. MCI incorporates by reference its comments previously filed against AT&T's other Tariff 15 offerings. MCI Petition at 3. Additionally, MCI contends that CPP8 is patently unlawful because it bundles AT&T's MEGACOM 800 service with other voice services and enables AT&T to take advantage of its market dominance in the 800 services market. *Id.* This practice, in MCI's opinion, has been proscribed by the Commission. *Id.*, citing AT&T Communications, Inc., Memorandum Opinion and Order, 5 FCC Rcd 3833 (Com.Car.Bur. 1990). Furthermore, MCI contends that AT&T cannot rely on the competitive necessity test as support for CPP8 because that offering is to a single customer rather than to a class of customers as the test requires. *Id.* at 4. MCI disputes AT&T's assertion that CPP8 is generally available. In MCI's view, the conditions under which another customer could procure CPP8 are so narrow that the offer is really only available to Original Cookie. *Id.* Finally, MCI contests AT&T's assertion that CPP8 is a "new offering" for which the Commission does not require a cost of service study. *Id.* at 5. MCI argues that CPP8 simply provides a price break to one customer for two existing services, not new ones. *Id.* Accordingly, MCI argues that AT&T's filing should include cost-of-service information as required by Section 61.38(b)(1) of the Rules, 47 C.F.R. § 61.38(b)(1), and also should comply with the price cap rules because SDN and MEGACOM services are offered. Id. at 5-6.

4. US Sprint argues that CPP8 fails to meet all three prongs of the competitive necessity test. [3] In US Sprint's opinion, CPP8 fails to meet the first prong of the test because AT&T's pricing does not meet the pricing of US Sprint's offer. US Sprint explains that its credit offer to Original Cookie reflects the costs that the customer would incur for transferring its business from AT&T to US Sprint. Those transfer costs include the expense of changing its existing 800 numbers. On the other hand, US Sprint contends, AT&T's credit is unrelated to the incurring of additional costs as there would not be any costs if Original Cookie maintained its service with AT&T. US Sprint Petition at 3-4. CompTel emphasizes that AT&T clearly does not satisfy the first prong of the competitive necessity test because AT&T's credit offer exceeds US Sprint's: the former applies if Original Cookie purchases SDN *or* MEGACOM 800 service whereas, US Sprint's offer purportedly applies if VPN, Ultra 800 *and* FON Card services are ordered. CompTel Petition at 2-3.

5. CPP8 also fails to meet the second prong of the competitive necessity test, in US Sprint's view, because the offering is unduly discriminatory as the service is an offer to a single customer *Id.* at 4. US Sprint charges that AT&T's statement that this offering will be available to other customers who have received a substantially similar offer is vague and inherently discriminatory. *Id.* at 5. US Sprint also asserts that the third prong of the competitive necessity test is also not met by AT&T because AT&T has not demonstrated that CPP8 will be profitable and not burden other ratepayers. *Id.*

6. According to US Sprint, CPP8 represents AT&T's attempt to circumvent price cap regulation[4] by offering "nothing more than discounted SDN and 800 service" under a Tariff 15 offering. *Id.* at 6. US Sprint charges that AT&T's selective transfer of price-capped services to Tariff 15 will increase the likelihood of cross-subsidization. *Id.* Furthermore, contends US Sprint, AT&T is pricing its Tariff 15 offerings on an incremental basis which is only made possible because other customers whose services are subject to price caps are paying the overhead costs. *Id.* at 7. AT&T's reliance on the net revenue test is improper, in US Sprint's view, as the Commission has stated that "new services offered under Tariffs 12, 15, and 16 are not eligible for review under the net revenues standard." *Id.* at 9.

7. NTN argues, generally, that this CPP, as the seven prior to it, is unlawful because it is a customer-specific pricing plan. Accordingly, NTN argues that the Bureau should reject CPP8 rather than suspend it. NTN Petition at 2.

B. AT&T Reply

8. AT&T contends that its use of the competitive necessity test is justified and alleges that US Sprint concedes its justification by confirming the existence of the latter's offer to Original Cookie. AT&T Reply at 2-3. AT&T also disputes MCI's claim that CPP8 impermissibly bundles MEGACOM 800 and SDN by noting that its credit offer applies to procurement of either service, not both. *Id.* at 3-4. Furthermore, AT&T believes, contrary to CompTel's allegations, that US Sprint's credit is based on a bundled offering and therefore, AT&T's offer would meet but not beat US Sprint's. Thus, according to AT&T, its offer satisfies the first prong of the competitive necessity standard. *Id.* at 4.

IV. DISCUSSION

9. We conclude, based on our review of the instant transmittal and the pleadings, that AT&T's offering raises significant issues that warrant investigation. Single-customer offerings raise serious questions of compliance with the prohibition against unreasonable discrimination established by the Communications Act. Yet, as the Commission observed at the time it initiated its investigation of the first Tariff 15 offering, the Holiday Rate Plan, "[l]egal precedent supports the view that otherwise discriminatory rates can be reasonable where justified by competitive necessity."[5] Determining whether AT&T may properly rely upon competitive necessity in this instance, however, requires further analysis and additional information from interested parties.

10. We also conclude that the issues raised by this transmittal warrant exercise of our discretion to suspend the transmittal pending investigation. We recognize that suspension is a severe regulatory action because it delays the implementation of service offerings. In deciding whether to suspend, we must balance the interests of ratepayers, the filing carrier, and the competitive process. On balance, we have decided that the potential for a violation of Section 202(a) of the Communications Act by the instant transmittal, and consequently the potential for harm to other ratepayers, outweighs any negative impact the suspension may have upon AT&T. Therefore, we conclude that the Commission's preference for avoiding unnecessary disruption of the competitive balance in the marketplace does not require that we refrain from suspending this transmittal.

11. We will incorporate this investigation into the proceeding established in CC Docket No. 90-327. We will designate the issues to be examined in this investigation in a future Order.

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to Sections 204(a) and 403 of the Communications Act of 1934, 47 U.S.C. §§ 204(a), 403, an investigation IS INSTITUTED into the lawfulness of the tariff revisions filed by AT&T Communications in Tariff F.C.C. No. 15, Transmittal No. 2401.

13. IT IS FURTHER ORDERED that this investigation IS INCORPORATED into the proceeding established in CC Docket No. 90-327.

14. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the instant tariff revisions filed by AT&T Communications ARE SUSPENDED until February 27, 1991.

15. IT IS FURTHER ORDERED that AT&T Communications SHALL FILE a supplement reflecting this suspension no late than five business days from the release of this Order. Special Permission No. 90-1064 is assigned for this purpose.

16. IT IS FURTHER ORDERED that the petitions to reject AT&T Communications Transmittal No. 2401 filed by MCI Telecommunications Corporation, National Telecommunications Network, and US Sprint Communications Company Limited Partnership ARE DENIED.

17. IT IS FURTHER ORDERED that the petition to reject or suspend and investigate AT&T Communications Transmittal No. 2401 filed by the Competitive Telecommunications Association IS GRANTED to the extent indicated herein and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] AT&T claims that each of its CPPs was generated in response to a competitor's offer to a specific customer.

[2] MCI Petition To Reject, filed July 2, 1990 (MCI Petition); US Sprint Petition To Reject, filed July 2, 1990 (US Sprint Petition); CompTel Petition To Reject or, in the Alternative, To Suspend and Investigate, filed July 2, 1990 (CompTel Petition); and Petition To Reject of the National Telecommunications Network, filed July 2, 1990 (NTN Petition). AT&T replied to these petitions on July 26, 1990 (AT&T Reply).

[3] To justify a discriminatory rate of the grounds of competitive necessity, the carrier must show that:

> 1) an equal or lower priced competitive alternative -- a similar offering or set of offerings from other common carriers or customer-owned systems -- is generally available to customers of the discounted offering;
>
> 2) the terms of the discounted offering are reasonably designed to meet competition without undue discrimination; and
>
> 3) the volume discount contributes to reasonable rates and efficient services for all users.

Private Line Rate Structure and Volume Discount Practices, CC Docket No. 79-246, 97 FCC 2d 923, 948 (1984).

[4] *See* 47 C.F.R. §§ 61.41-61.49.

[5] AT&T Communications, CC Docket No. 88-471, Memorandum Opinion and Order, 4 FCC Rcd 7712, 7713 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-47

In the Matter of

Amendment of Section 73.202(b),	RM-6588
Table of Allotments,	RM-6591
FM Broadcast Stations.	
(Greenville and LaGrange, Georgia)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 19, 1990; Released: October 9, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of L. Lynn Henley ("Henley") and Orchon Broadcasting Company ("Orchon"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 2169 (1989), proposing the allotment of Channel 239A to either Greenville or LaGrange, Georgia. Greenville and LaGrange are located approximately 30 kilometers apart while the Commission's Rules require a separation of 105 kilometers between co-channel Class A allotments. Therefore, the proposals are mutually exclusive. Henley, Orchon, and Tharpe Communications, Inc. ("Tharpe"), licensee of Station WMXY(AM), Hogansville, Georgia, filed comments. Orchon filed reply comments.

2. Orchon, in its comments, states that Greenville should be preferred over LaGrange since Greenville presently has no local aural service of any kind, commercial or non-commercial. LaGrange, on the other hand, presently has one daytime-only aural commercial service, and one non-commercial educational FM service. Orchon contends that the entire primary service area proposed for LaGrange presently receives at least two existing fulltime aural services. Thus, the allotment of Channel 239A to LaGrange would not result in either a first or second fulltime aural service.

3. Henley, in its comments, states that LaGrange (population 24,204) is almost twenty times as large as the small community of Greenville (population 1,213). Henley contends that LaGrange is a retail trading center for several counties in West Central Georgia, whereas Greenville is little more than a "wide spot in the road." Henley contends that LaGrange currently has no local service because, although WEKS(FM) is licensed to LaGrange the station has become a *de facto* Atlanta station. Henley contends that WEKS has relocated its transmitter site closer to Atlanta, relocated its main studio in Atlanta, and provides no local service of any kind to LaGrange. Henley states that Channel 239A should be considered as a first local FM service for LaGrange, because of its greater population, and should be preferred over the smaller community of Greenville.

4. Tharpe, in its comments, states that LaGrange, located in Troupe county, now has four commercial AM stations and two commercial FM stations. Tharpe contends that there is near saturation in the LaGrange locality and any additional allotments will result in a deterioration of the quality of service provided to the communities, and would not be in the public's interest.

5. Orchon, in its reply comments, states that Henley's arguments in support of LaGrange rest entirely upon its belief that WEKS is no longer licensed to LaGrange. Orchon contends that WEKS(FM)'s community of license is LaGrange, not Atlanta. Therefore, Henley may not claim that LaGrange is without local FM service. Orchon states that Henley ignores the fact that LaGrange is also the community of license for Station WLAG(AM), a fulltime local radio station. Orchon states that Greenville is clearly preferred over LaGrange, since it has no local aural service.

6. A review of the proposals indicates that Greenville and LaGrange are both deserving of an FM channel. However, Channel 239A is the only channel available to either Greenville or LaGrange. Thus, we shall base our decision on the allotment criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), as follows:

(1) first full-time aural service;

(2) second full-time aural service;

(3) first local service; and

(4) other public interest matters.

[Co-equal weight given to priorities (2) and (3)].

The allotment of Channel 239A to Greenville would provide a first local service, fulfilling priority (3). We find that no first or second full-time aural service would be provided to LaGrange since Stations WTRP(AM), WLAG(AM), WOAK(FM), and WEKS(FM)[1] are licensed to LaGrange. Therefore, this allotment would not provide a first local service to LaGrange, but would instead provide a fifth local service, which is a lower priority.[2] Thus, we believe the public interest would be served by allotting Channel 239A to Greenville, since it has no local service whatsoever.

7. An engineering analysis has determined that Channel 239A can be allotted to Greenville, Georgia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) south to avoid a short-spacing to Station WKLS, Channel 241C, Atlanta, Georgia. [3]

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Greenville, Georgia	239A

9. The window period for filing applications will open on **November 26, 1990,** and close on **December 26, 1990.**

10. IT IS FURTHER ORDERED, That the petition for Rule Making filed by L. Lynn Henley (RM-6588) requesting the allotment of Channel 239A to LaGrange, Georgia, IS DENIED.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Station WEKS's call sign was changed to Station WYAI on June 28, 1989. For ease of reference, we have referred to the station as WEKS throughout this document.

[2] Assuming *arguendo* that Henley's unsupported complaints about Station WEKS failing to discharge its obligations to its community of license are accurate, we decline to remedy this failing of a specific licensee by allotment of a new channel. This is a matter more properly addressed by the assignment and renewal process.

[3] The coordinates for Channel 239A at Greenville are North Latitude 32-55-45 and West Longitude 84-45-41. Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the licensee may implement this allotment by availing itself of the provisions of Section 73.213 (c)(i) of the Commission's rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-437

In the Matter of

Amendment of Section 73.202(b), RM-7284
Table of Allotments,
FM Broadcast Stations.
(Marion and Orrville, Alabama)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 21, 1990; Released: October 9, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Marion Radio, Inc. (petitioner), permittee of Station WJAM-FM, Channel 248A, Marion, Alabama. Petitioner seeks to amend the FM Table of Allotments by substituting Channel 247A for Channel 248A, changing the community of license from Marion to Orrville, Alabama, and modifying its permit to specify operation of Channel 247A.

2. In support of its proposal, petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules.[1] In this connection, petitioner advises that the requested move to Orrville is mutually exclusive with the present allotment of Channel 248A at Marion. The distance between the two reference points is 40.3 kilometers whereas a distance of 72 kilometers is required by Section 73.207(b) of the Commission's Rules between first adjacent channel Class A stations.[2] Furthermore, petitioner advises that its proposal would afford Station WJAM-FM the opportunity to avail itself of the allowable increase in power for Class A stations from 3 kW to 6 kW, an opportunity from which it is presently precluded. Petitioner advises it cannot increase power on Channel 248A at Marion due to spacing constraints on the co-channel to Station WABB(FM), Mobile, Alabama, and on the first adjacent channel to Station WEZZ(FM), Channel 249A, Clanton, Alabama. Petitioner asserts that its proposal could provide a first local broadcast service to Orrville (population 349), [3] and would not deprive Marion (population 4,467), of local service since Station WAJO(AM) is presently licensed to that community.

3. In light of the above, we will propose to substitute Channel 247A for Channel 248A and to reallot Channel 247A to Orrville, as requested, since it could enable the community to receive its first local broadcast service. However, in consideration of Orrville's small size, we tentatively conclude that this mutually exclusive proposal should be considered under the Commission's "quiet village" doctrine. *See Debra C. Carrigan*, 100 FCC 2d 721, *recon. denied*, 101 FCC 2d 218 (1985), *review denied*, 104 FCC 2d 826 (1986). *See also Beacon Broadcasting*, 2 FCC Rcd 3469, 3471-72 (1987), *recon. denied*, 2 FCC Rcd 7562 (1987), and *Reeder* v. *FCC*, 865 F.2d 1298, 1305-1306 (D.C. Cir. 1989). If we ultimately decide to apply the "quiet village" doctrine, we would be inclined to conclude that maintaining a competitive voice in Marion would better serve the public interest than realloting that channel to the quiet village of Orrville. Comments are invited on our tentative conclusion.

4. As requested, we also propose to modify petitioner's permit for Station WJAM-FM to specify Orrville, Alabama, as its community of license. In accordance with the provisions of Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in the use of the channel at Orrville or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

5. Channel 247A can be allotted to Orrville in conformity with the Commission's minimum distance separation requirements at the petitioner's specified site.[4]

6. In consideration of the above, we believe it is appropriate to seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Marion, Alabama	248A	–
Orrville, Alabama	–	247A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **November 30, 1990,** and reply comments on or before **December 17, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Marion Radio, Inc.
Attn: Paul Reynolds, President
415 North College
Greenville, AL 36037

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by

the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] *See Report and Order,* MM Docket No. 88-526, 54 FR 26199, (June 22, 1989); *recon. pend.*

[2] Coordinates used by petitioner at Orrville are 32-18-00 and 87-09-30, while those specified in the construction permit for Station WJAM-FM are 32-37-57 and 87-19-51.

[3] Population figures used herein were taken from the 1980 U.S. Census.

[4] Petitioner's specified site is located 8.2 kilometers (5.1 miles) east of Orrville at coordinates 32-18-00 and 87-09-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-89

In the Matter of

Amendment of Section 73.202(b), RM-7129
Table of Allotments,
FM Broadcast Stations.
(McCleary, Washington)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1990; Released: October 9, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 1272 (1990), proposing the allotment of Channel 245C3 to McCleary, Washington, as that community's first local FM service. The *Notice* was issued in response to a petition filed by Susan M. Ciborosky (petitioner). Petitioner filed comments reaffirming her interest in the channel. No other comments were received.

2. An engineering analysis confirms that Channel 245C3 can be allotted to McCleary, Washington, in compliance with the Commission's minimum distance separation requirements with a site restriction 1.6 kilometers (1 mile) south of the community.[1] The site restriction is required in order to avoid a short spacing to Canadian Station CKKS-FM, Channel 245C at Vancouver, British Columbia. In addition, since the community is located within 320 kilometers (200 miles) of the U.S. - Canadian border, concurrence of the Canadian government has been obtained for this allotment.

3. In view of the above information, we believe that the public interest would be served by allotting Channel 245C3 to McCleary, Washington, since this allotment could provide a first local FM service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
McCleary, Washington	245C3

4. The window period for filing applications for Channel 245C3 at McCleary will open on **November 26, 1990,** and close on **December 26, 1990.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 245C3 are 47-02-20 and 123-16-28.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-578

In the Matter of

Amendment of Section 73.202(b), RM-7167
Table of Allotments,
FM Broadcast Stations.
(Ocean City, Maryland)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1990; Released: October 9, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 8733 (1989), proposing the allotment of FM Channel 295A to Ocean City, Maryland, as that community's third FM broadcast service. The *Notice* was issued in response to a petition filed by Joseph A. Booth (petitioner). Petitioner submitted information in support of the proposal and stated his intention to file an application for the channel. Aris Mardirossian filed comments supporting the allotment of Channel 295A at Ocean City. No other comments were received.

2. An engineering analysis confirms that Channel 295A can be allotted to Ocean City, Maryland, in compliance with the minimum distance separation requirements of the Commission's Rules at the city reference coordinates.[1]

3. In view of the above information, we believe that the public interest would be served by allotting Channel 295A to Ocean City, Maryland, since this allotment could provide a third FM broadcast service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Ocean City, Maryland	260B, 284B, 295A

4. The window period for filing applications for Channel 295A at Ocean City will open on **November 26, 1990,** and close on **December 26, 1990.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 295A at Ocean City are 32-20-00 and 75-05-18. Since the petition which resulted in this allotment was filed prior to October 2, 1989, applicants for this new allotment may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-308

In the Matter of

Amendment of Section 73.202(b), RM-7173
Table of Allotments,
FM Broadcast Stations.
(Statesboro, Georgia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1990; Released: October 9, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Pamela H. Hodges (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 5 FCC Rcd 3731 (1990), proposing the substitution of Channel 275C3 for Channel 275A at Statesboro, Georgia, and modification of the construction permit for Station WUUF(FM) to specify operation on the higher class channel. Petitioner filed comments restating her intention to apply for channel 275C3, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 275C3 for Channel 275A at Statesboro, Georgia, since it would provide Statesboro with an expanded coverage area FM service. Channel 275C3 can be allotted to Statesboro in compliance with the Commission's minimum distance separation requirements with a site restriction 13.6 kilometers (8.5 miles) west,[1] in order to avoid a short-spacing to Station WIVY(FM), Channel 275C, Jacksonville, Florida, and to Station WBHC(FM), Channel 276A, Hampton, South Carolina. In accordance with Section 1.420(g) of the Commission's Rules, we are modifying the construction permit of Station WUUF(FM) to specify operation on Channel 275C3.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 23, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Statesboro, Georgia	261C2, 275C3

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station WUUF(FM), Statesboro, Georgia, IS MODIFIED, to specify operation on Channel 275C3 in lieu of Channel 275A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 275C3 at Statesboro are North Latitude 32-24-00 and West Longitude 81-55-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-419

In re Applications of

Marion Radio Corporation (hereafter "Marion")	File No. BPH-881208MH
T.C. Monte, Inc. (hereafter "Monte")	File No. BPH-881208MI
Rosemary C. Fantasia (hereafter "Fantasia")	File No. BPH-881208ML
Roger F. Weigle (hereafter "Weigle")	File No. BPH-881208MM

For Construction Permit for a New FM Station on Channel 226A in Barrackville, West Virginia

HEARING DESIGNATION ORDER

Adopted: September 13, 1990; Released: October 9, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
T. C. Monte, Inc.	2/22/90; 3/15/90; 5/18/90
Roger F. Weigle	9/22/89

3. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Monte and Weigle ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

7. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

8. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

9. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-425

In re Applications of

North Country Broadcasting Co., Inc. (hereafter "North Country")	File No. BPH-881116MA
Lila Lou Couturier (hereafter "Couturier")	File No. BPH-881116MB
Malone FM, Inc. (hereafter "Malone FM")	File No. BPH-881117MA

For Construction Permit
for a New FM Station on Channel 243A
in Malone, New York

HEARING DESIGNATION ORDER

Adopted: September 13, 1990; Released: October 9, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Malone FM.* Exhibit 1 of Malone's FM application indicates that Joanne Root, principal and 100% stockholder of Malone FM, is the mother of Thomas L. Root, Esq. (hereafter "Root"). Section II Item 7 of FCC Form 301 also indicates that Mrs. Root is the 3.75% stockholder of The Petroleum V. Nasby Corporation, licensee of WSWR-FM, Shelby, Ohio.[2]

The Commission is currently conducting an inquiry into alleged abuses of the Commission's processes by Sonrise Management Services, its applicants, its attorneys, consultants, and advisors. *See Order* in MM Docket No. 89-358, 4 FCC Rcd 6342 (1989). Root, having served as the attorney of record for numerous applicants formed by Sonrise, is consequently involved in the inquiry.

Furthermore, following the District of Columbia Court of Appeals' April 12, 1990 *Order* disbarring Root from practice by consent, *Thomas L. Root*, BDN 117-89, decided April 12, 1990, the Commission, on June 21, 1990, ordered Root disbarred from the practice of law before it, effective July 6, 1990. *See Thomas L. Root*, General Docket 90-297, released June 28, 1990.

Finally, on June 5, 1990, Root pled guilty before a U.S. District Court judge to five felony counts, all pertaining to fraud and forgery with respect to clients seeking to obtain FM construction permits before the Commission. *See United States v. Thomas Root*, Criminal Docket No. 90-134, June 5, 1990.

In light of Root's extensive involvement with Sonrise related activities, and his participation and ultimate implication in the abuse of process proceedings, the filing of yet another FM application, by him, on his mother's behalf, calls into question the extent of his actual involvement in the Malone, NY proceeding. Accordingly, a real party in interest issue will be specified below.

3. The applicant Malone FM lists the geographical coordinates of its proposed antenna as 44^0 48' 02" NL, 79^0 19' 39" WL in Section V-B, Item 2(b). However, the transmitter site map shows the proposed site at the geographical coordinates 44^0 48' 02" NL, 74^0 19' 39" WL. These 74-19-39 coordinates are listed in the applicant's contour study submitted along with the engineering statement (Exhibit E4). The staff can, "drawing on the application as a whole," confidently and reliably verify that the correct coordinates are 44^0 48' 02" NL, 74^0 19' 39" WL. Accordingly, Malone FM was found acceptable for filing; however, it shall be required to file a corrective amendment to the application with the presiding Administrative Law Judge within 30 days of the release of this Order.

4. North Country petitioned for leave to amend its application on October 24, 1989. The accompanying amendment was filed after April 3, 1989, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment(s) will be disallowed.

5. Since no determination has been received from the Federal Aviation Administration as to whether the antennas proposed by Couturier and Malone FM would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

6. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Thomas L. Root, son of Joanne Root, is an undisclosed party-in-interest in Malone FM's application, and if so, what effect that has on its basic qualifications to be a Commission licensee.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by Couturier and Malone FM would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That Malone FM file a corrective amendment to its application with the presiding Administrative Law Judge within 30 days of the release of this Order, pursuant to paragraph 3 hereinabove.

10. IT IS FURTHER ORDERED, That the petition for leave to amend filed by North Country IS GRANTED, and the corresponding amendment is accepted to the extent indicated herein.

11. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] On January 19, 1989 and February 8, 1989, the Commission received letters in support of the North Country Broadcasting Company Inc. application.

[2] The April 26, 1990 Ownership Report (Form 323) filed on behalf of the Petroleum V. Nasby Corporation indicates that Joanne Root and husband Thomas *F.* Root jointly own 21.1% voting stock in the corporation. Various family members own the remaining share of the company.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-422

In re Applications of

MAINES BROADCASTING COMPANY (hereafter "Maines")	File No. BPH-880825MN
SAGINAW BAY BROADCASTING, INC. (hereafter "SBB")	File No. BPH-880825MZ
THOMAS M. EELLS (hereafter "Eells")	File No. BPH-880825NO
HICKS BROADCASTING CORPORATION (hereafter "Hicks")	File No. BPH-880825NS

For Construction Permit
for a New FM Station
in Saginaw, Michigan
Channel 283A (104.5 MHz)

HEARING DESIGNATION ORDER

Adopted: September 13, 1990; Released: October 9, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Eells*. On pages 1 and 2 of his technical statement, Eells indicates that he proposes to place his transmitting antenna on an existing tower at 1650 Treanor Road in Saginaw, Michigan and that his listed coordinates correct those found in the Commission's records for this site. However, Eells failed to notify the Federal Aviation Administration of this correction. Further, the tower heights above ground level and above mean sea level listed in Eells' application (145 meters AGL/330 meters AMSL) do not agree with those for the previously cleared tower (149.4 meters AGL/334.7 meters AMSL). Accordingly, an air hazard issue must be specified and Eells will be required to secure FAA approval for the corrected coordinates.

3. *Hicks*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Hicks would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

4. *Other Matters*. The applicants below have petitioned for leave to amend their application on the dates shown. The accompanying amendments were filed after December 19, 1988, the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENTS FILED
SBB	March 7, April 4 and December 12, 1989
Eells	July 17 and October 30, 1989; January 30, 1990

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Eells and Hicks would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

8. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by SBB and Eells ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to

the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Request for Extension of Waiver of GL-90084

MOBIL OIL TELECOM, LTD.
P.O. Box 6500232
Dallas, Texas 75265-0232

ORDER

Adopted: October 1, 1990; Released: October 9, 1990

By the Chief, Land Mobile and Microwave Division:

I. INTRODUCTION

1. By an Order released October 3, 1988, (Order)[1], Mobil Oil Telecom, Ltd. (Mobilcom) was granted a limited waiver of Section 94.9(b)(1) for two years, (i.e. to October 3, 1990), to allow it to lease excess capacity on several of its OFS stations located in the Gulf of Mexico to Petroleum Communications, Inc. (Petrocom), a licensee authorized to provide cellular radio service in the Gulf coastal waters.[2] Section 94.9(b)(1) prohibits the rendition of a common carrier communications service in the Private Operational-Fixed Microwave Service (OFS).

II. BACKGROUND

2. In the Order we determined under the criteria set out in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F. 2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976) (NARUC I) Mobilcom's status as a private licensee was not jeopardized by the request of its customer Petrocom to lease Mobilcom's excess capacity for reuse in common carriage communications. In NARUC I, the court determined that a common carrier offers service indiscriminately to the general public either by obligation or choice. Private carriers, however, make individualized decisions regarding the terms and conditions of their service offerings. The arrangement between Mobilcom and Petrocom is a long term contract containing such individualized terms and conditions and does not endanger Mobilcom's private licensee status.

3. We then determined that a grant of the waiver request would be in the public interest and would not frustrate the public interest policy that the rule section seeks to protect. [3] We found that there were no offshore platforms off the coast of Texas large enough to accommodate Petrocom's cellular base stations and earth stations. Further, there were no licensees authorized to provide onshore cellular service in the area, so Petrocom did not have the options of leasing capacity from a common carrier licensee or colocating its own base stations at the site of such a licensee. In addition, allowing Mobilcom to lease a relatively small amount of its unused capacity (10%) for a limited time (two years) would further the Commission's policy of encouraging efficient spectrum use.

III. DISCUSSION

4. When they requested the original waiver, the parties assumed that a two year term would be sufficient. Petrocom and Mobilcom were "confident that cellular stations would be licensed in inland rural areas shortly" (*Order*, 3 FCC Rcd, 5832). Further, if coastal cellular service were not available at the end of the two year period, Petrocom indicated that it would offer to purchase Mobilcom's OFS stations and replace them with point to point common carrier microwave facilities, since the offshore facilities used for Mobilcom's system are not large enough to accommodate both common carrier and OFS facilities.[4]

5. Coastal cellular service has been much slower to develop than anticipated by Petrocom when the waiver was granted in 1988. There are no appropriate facilities yet available for Petrocom to substitute for its presently contracted use of Mobilcom's OFS facilities. Further, although Petrocom would offer to buy Mobilcom's OFS facilities and substitute its own common carrier communications facilities in their place, there is no public interest benefit in doing this in lieu of extending the waiver for a limited period. Under the circumstances, we believe that the original limitation of the waiver to two years based upon anticipated cellular market developments was an overly optimistic judgement. We believe that an extension of the waiver for a further two years is appropriate. The arrangements between Petrocom and Mobilcom have not changed; the grounds for grant of an extension of this waiver are therefore identical to grounds for the grant of the original waiver.

IV. CONCLUSION

6. Accordingly, IT IS ORDERED, that Mobilcom's request for an extension of the waiver set out in our *Order* released October 3, 1988, 3 FCC Rcd 5832, is GRANTED for two years, through October 3, 1992.

FEDERAL COMMUNICATIONS COMMISSION

Richard J. Shiben
Chief, Land Mobile and Microwave Division
Private Radio Bureau

FOOTNOTES

[1] Mobil Oil Telecom, Ltd., 3 FCC Rcd 5832 (PRB 1988).

[2] Petrocom is a provider of cellular radio service in the Gulf of Mexico. The waiver permits the use of excess capacity on four microwave paths presently licensed to Mobilcom for the transmission of Petrocom's cellular traffic. These four systems haul Petrocom's traffic from four cellular base stations, located on offshore platforms, to points on shore, where the traffic is relayed by satellite to Petrocom's switch in New Orleans.

[3] *See* 47 C.F.R. §§ 1.3, 90.151; WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969); Thomas Radio v. FCC, 718 F.2d 921 (D.C. Cir. 1983).

[4] *See* Order, n. 6.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-417

In re Applications of

VIERA & LLOYD (hereafter V & L)	File No. BPH-890502MC
AMADOR & ROSALIE BUSTOS (hereafter ARB)	File No. BPH-890503ME
LOS BANOS EDUCATIONAL SERVICES, INC. (hereafter LBES)	File No. BPED-890503MI

For Construction Permit
for a New FM Station on Channel 295A
in Los Banos, California

HEARING DESIGNATION ORDER

Adopted: August 29, 1990; Released: October 9, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. ARB filed a Petition to Deny against LBES, stating that its application was inadvertently accepted for tender because: (i) LBES' signal contour map fails to accurately depict the 70 dBu contour that its proposed facility would create; (ii) the signal contour map fails to clearly and legibly depict the boundaries of Los Banos; and (iii) the description of the transmitter site in LBES' Section V-G conflicts with the depiction of the site on LBES' topographic site map. ARB's petition also states that LBES' application was inadvertently accepted for filing because its proposal, ARB claims, would provide city-grade coverage to only 11% of Los Banos, and LBES failed to file for a waiver of the Commission's city coverage rule (47 U.S.C. § 73.315) before the amendment as of right period had expired. Finally, ARB states that LBES has not demonstrated its qualifications to be an NCE-FM licensee.

3. LBES filed an opposition to the petition on June 22, 1990, stating that: (i) it believes that its proposed coverage of Los Banos exceeds 50%; (ii) it has filed a request for waiver of the city coverage rule, which demonstrates that, if necessary a waiver of the rule would be in the public interest[1]; (iii) LBES' transmitter site "can be located with absolute certainty based upon the the consistency of the coordinates presented throughout LBES' application"; (iv) the Los Banos city limits are clearly depicted on the contour map submitted as Exhibit E-1 of the application; (v) the submitted maps conform to all pertinent Commission requirements; and (vi) it has "provided sufficient information regarding its programming plans and its organization for the purposes of the application."

4. We will grant ARB's petition to the extent indicated below. First, we note that LBES' transmitter site is consistently listed throughout its application and also is correctly plotted on the site map submitted with the original application.[2] Second, the 70 dBu contour and city boundary of Los Banos are both clearly depicted on the contour map submitted with the original application. Finally, we must note that petitioner ARB is correct that LBES has neither demonstrated its qualifications to be a noncommercial educational licensee, nor does it provide adequate city grade coverage. However, for reasons which follow, educational qualifications and city coverage issues will be designated against LBES; its application will not be dismissed.

5. On June 4, 1990, LBES filed an amendment which proposed to: (i) update the status of its organizational structure; (ii) increase its effective radiated power to 6 kW; and (iii) bolster its showing regarding its educational qualifications. We will accept the organizational structure update under section 1.65 of the Rules.

6. LBES' June 4, 1990, amendment proposed *inter alia*, to increase its effective radiated power to 6 kW. This increase in power would allow LBES to provide adequate city grade coverage to Los Banos. Moreover, LBES also filed an amendment dated June 15, 1990 requesting waiver of the Commission's city grade coverage rule, 47 C.F.R. § 73.315. LBES' application was put on *Public Notice* for acceptance for tender on July 31, 1989 and LBES, therefore had until September 1, 1989 to file amendments as a matter of right. After the close of the amendment as of right period, an applicant cannot file a curative amendment to correct a grantability defect. *See Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (1985). To accept amendments after the close of the amendment as of right period would be unfair to the other applicants in this proceeding, who fully complied with our acceptability requirements as of the amendment as of right date. *See Prime Media Broadcasting, Inc.*, 3 FCC Rcd 4293 (1988); *See also, Emmy Hahn Limited Partnership*, 4 FCC Rcd 8336 (1989); *Domega Broadcasting Corp.*, 4 FCC Rcd 1450 (1989). Accordingly, the portion of LBES' June 4, 1990, amendment addressing its proposed increase in power and its June 15, 1990, amendment are untimely and will herein be returned. Furthermore, an appropriate issue will be added addressing LBES' insufficient city grade coverage.

7. Similarly, we will not accept that part of the June 4, 1990, amendment regarding LBES' educational qualifications because it, too, is untimely. Accordingly, the portion of LBES' amendment addressing its educational qualifications will be returned, and pursuant to the discussion, *infra*, an educational qualifications issue will be specified.

8. *LBES' Qualifications*. LBES' application, filed on FCC form 340, does not demonstrate that it is eligible to be a noncommercial educational (NCE) applicant. These standards of eligibility were published in Appendix A to the *Notice of Inquiry* in BC Docket No. 78-164, 43 FR 30842 (1978). Although they were meant for entities applying for reserved channels, they will be applied to LBES here, since it has chosen to present itself as a noncommercial educational applicant.

9. Under 47 C.F.R. § 503(e), NCE-FM applicants must be educational institutions or educational organizations. There is a question whether LBES is a qualified entity. LBES stated in its original application that it was a nonprofit corporation, with Mr. George Sullivan as President, Secretary, Director and sole voting shareholder. However, in an amendment filed on June 7, 1990, LBES indicated that it had not in fact incorporated, but was instead a "private non-profit educational foundation," with Mr. Sullivan as Chairman of the Board, sole member, and 100% owner. This vacillation raises questions regarding LBES' structural qualifications to be an NCE-FM licensee.

10. Second, an entity seeking to become an NCE applicant must demonstrate that it is committed to a suitable educational program. LBES states that its purpose is:

> to build and operate an FM station at Los Banos, California that will be used to train and educate people interested in getting into the communications field who are unable to enter broadcasting elsewhere . . . [T]he applicant also plans to provide programming that will be beneficial to the Los Banos, California area including programming of an educational nature.

(LBES Application, Exhibit A). The fact that LBES proposes to use its facility for vocational broadcast training is not relevant to determining its eligibility to become a noncommercial educational licensee. *See Way of the Cross of Utah, Inc.*, 58 RR 2d 455, 460 (1985). Therefore, this "educational program" clearly does not meet the eligibility requirements. LBES has the burden of establishing its eligibility as a noncommercial educational applicant and has thus failed to provide the necessary information called for by our rules and procedures. Were LBES' proposing to operate on a reserved channel, its application could be dismissed for this deficiency without hearing. *Bible Moravian Church*, 28 FCC 2d 1 (1971); *see also Way of the Cross*, *supra*. However, because LBES is proposing to operate on a commercial channel, we will merely specify an educational qualifications issue.

11. An engineering study of the application submitted by V & L reveals a discrepancy between the coordinates listed in section V-B and those plotted on the transmitter site map. Specifically, the applicant lists the geographical coordinates for the KLBS-AM tower, on which it proposes to locate its antenna, at 37^0 05' 51" N.L., 120^0 *49' 51* " W.L. in section 2(b). However, on the topographic map (Exhibit E-3) which the applicant submitted with the application, the location of the proposed antenna site was plotted at the coordinates 37^0 05' 51" N.L., 120^0 *50' 09* " W.L. The Commission's database shows the geographical coordinates for this tower to be 37^0 05' 51" N.L., 120^0 *49' 51* " W.L. Because V & L proposes to locate its antenna on an existing tower, this is neither a tenderability nor an acceptability defect. However, V&L must file an amendment to correct this discrepancy.

12. An engineering study of the application submitted by LBES reveals a discrepancy in the calculation of the antenna height above average terrain (HAAT). The applicant lists a radiation center above mean sea level (RCAMSL) and HAAT of 119 meters and 100 meters respectively in Section V-B question 6. However, computations using the terrain profile data contained in the Commission's database indicates that at the proposed site a RCAMSL of 119 meters would correspond with an HAAT of 78.9 meters. This is neither a tenderability nor acceptability defect because we can take official notice of the correct information contained in the Commission's own records. However, LBES must file an amendment to correct this discrepancy.

13. ARB and V & L propose to sidemount their antenna on the existing KLBS-AM tower. Our engineering study indicates that this proposal may significantly exceed the ANSI guidelines for human exposure to radio frequency (RF) radiation as outlined in OST Bulletin No. 65 (October 1985). Consequently, we are concerned that ARB and V & L may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure of workers or the general public to levels of RF radiation exceeding specific standards. Since ARB's and V & L's proposals may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. The studies must include the effects of KLBS-AM and each applicant's proposal. In this regard, if the site is presently fenced in compliance with the guidelines, ARB and V & L are to so state and give the distance from the base of the tower to the fence. Accordingly, ARB and V & L will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of each Environmental Assessment submitted by ARB and V & L, that ARB's and V & L's proposals will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the Presiding Judge shall thereafter not consider the environmental effects of the proposal. *See* Section 1.1308(d) of the Commission's Rules.

14. The applicants below have petitioned for leave to amend their application on the dates shown. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
V & L	September 18, 1989; December 22, 1989; April 23, 1990
ARB	November 14, 1989; March 8, 1990; July 10, 1990
LBES	June 4, 1990 [3]

15. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and LBES have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by LBES would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

16. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

17. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to LBES, whether the applicant is qualified to be a noncommmercial educational FM licensee.

2. If a final environmental impact statement is issued with respect to ARB or V & L in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

3. To determine whether there is a reasonable possibility that the tower height and location proposed by LBES would constitute a hazard to air navigation.

4. To determine whether the proposal of LBES would provide coverage of the city sought to be served, as required by Section 73.315(a) ot the Commission's Rules, and, if not, whether circumstances exist which warrant waiver of that Section.

5. To determine which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

18. IT IS FURTHER ORDERED, That the Petition To Deny filed by ARB IS GRANTED to the extent indicated and denied in all other respects.

19. IT IS FURTHER ORDERED, That the June 15, 1990, amendment filed by LBES requesting waiver of Commission rule 73.315 IS RETURNED.

20. IT IS FURTHER ORDERED, That the June 4, 1990 amendment filed by LBES IS RETURNED except as it relates to applicant's ownership structure.

21. IT IS FURTHER ORDERED, That V & L shall file an amendment with the presiding Administrative Law Judge correcting its coordinates within 30 days of the release of this Order.

22. IT IS FURTHER ORDERED, That LBES shall file an amendment correcting the discrepancy in its radiation center heights with the presiding Administrative Law Judge within 30 days of the release of this Order.

23. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by V & L, LBES and ARB ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

24. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

25. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

26. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

27. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] In the waiver request, LBES indicates that: (i) its proposal places a 70 dBu signal over 50% of Los Banos; (ii) Los Banos has two other FM radio services, but no other educational radio services; (iii) it will place a signal of at least 67 dBu over all of Los Banos; and (iv) waiver may not even be required, because LBES filed an amendment to upgrade its proposal to 6 kW on June 4, and the upgraded proposal clearly covers all of Los Banos with a full 70 dBu signal. This waiver was not timely filed, as applicants cannot amend their proposals to counter alleged acceptability or grantability defects after the 30-day

amendment period running from release of the public notice announcing the acceptance for tender of the pertinent application. *See* the *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19,936 (May 13, 1985); and 47 C.F.R. § 73.3522(a)(6). Thus, the waiver request will be dismissed below for this reason.

[2] The coordinates and plotting were verified by the FM Branch processing staff.

[3] As indicated above, we are accepting only the portion of this amendment pertaining to LBES' organizational structure.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-200

In the Matter of

Amendment of Section 73.202(b), RM-7143
Table of Allotments,
FM Broadcast Stations.
(Newberry, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 24, 1990; Released: October 10, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Newberry Broadcasting Corporation (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 5 FCC Rcd 2590 (1990), proposing the substitution of Channel 263C3 for Channel 263A at Newberry, Florida, and the modification of its construction permit (BPH-861217MF) for Station WNFQ(FM) to specify operation on the higher class channel. Petitioner filed comments reaffirming its intention to apply for Channel 263C3, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 263C3 for Channel 263A at Newberry, Florida, since it would enable Station WNFQ(FM) to expand its coverage area. Channel 263C3 can be allotted to Newberry in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.4 miles) west of the community,[1] in order to avoid a short-spacing to Station WYGC, Channel 265A, Gainesville, Florida. In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the construction permit for Station WNFQ to specify operation on Channel 263C3.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Newberry, Florida	263C3

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WNFQ(FM), Newberry, Florida, IS MODIFIED to specify operation on Channel 263C3 in lieu of Channel 263A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 263C3 at Newberry are North Latitude 29-39-21 and West Longitude 82-44-49.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-439

In the Matter of

Amendment of Section 73.202(b), RM-7324
Table of Allotments,
FM Broadcast Stations.
(Cave City, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 24, 1990; Released: October 10, 1990

By the Deputy Chief, Policy and Rules Division:

1. Steven W. Newberry (petitioner), licensee of Station WHHT(FM), Channel 279A, Cave City, Kentucky, has filed a petition for rule making requesting the substitution of Channel 279C3 for Channel 279A at Cave City, Kentucky, and modification of his license for Station WHHT(FM) to specify the higher powered channel. Petitioner states his intention to apply for the channel, if allotted.

2. Channel 279C3 can be allotted to Cave City in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.2 kilometers (10.7 miles) south[1] of the community in order to avoid a short-spacing to a vacant allotment at Drakesboro, Kentucky, Channel 280A.

3. As requested, we shall also propose to modify the license of Station WHHT(FM) to specify operation on Channel 279C3. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest for use of the higher powered channel at Cave City or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

4. In view of the fact that Cave City could receive its first wide coverage FM channel, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Cave City, Kentucky	279A, 294A	279C3, 294A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 3, 1990,** and reply comments on or before **December 18, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John F. Garziglia
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(Attorney for Steven W. Newberry)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Petitioner's proposed coordinates for Channel 279C3 at Cave City are North Latitude 36-59-39 and West Longitude 86-01-48.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-210

In the Matter of

Amendment of Section 73.202(b), RM-7153
Table of Allotments,
FM Broadcast Stations.
(Glasgow, Kentucky)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 24, 1990; Released: October 10, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of WOVO Broadcasting, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 5 FCC Rcd 2666 (1990), proposing the substitution of Channel 287C3 for Channel 288A at Glasgow, Kentucky, and the modification of its license for Station WOVO(FM) to specify operation on the higher powered channel. Petitioner and W and B Broadcasting, Inc. ("WASE"), licensee of Station WASE(FM), Fort Knox, Kentucky, filed supporting comments.

2. WASE, in its comments, states that with the change in frequency of Station WOVO to Channel 287C3, it will be fully spaced, and will be able to increase its power to 6 kW, thus providing a new radio service to a substantial number of people. WASE goes on to state that, in addition to the benefits to the Glasgow area which could result from the extended coverage to WOVO, the Fort Knox area would also benefit from the larger coverage area for WASE.

3. In view of the above, we believe the public interest would be served by substituting Channel 287C3 for Channel 288A at Glasgow, Kentucky, since it could enable Station WOVO(FM) to serve an expanded coverage area. Channel 287C3 can be allotted to Glasgow in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.9 kilometers (11.8 miles) southeast of the community,[1] in order to avoid a short-spacing to the licensed site of Station WYNG(FM), Channel 287B, Evansville, Indiana, and to Station WCLC(FM), Channel 286A, Jamestown, Tennessee. In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station WOVO(FM) to specify operation on Channel 287C3.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Glasgow, Kentucky	236C, 287C3

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WOVO(FM), Glasgow, Kentucky, IS MODIFIED to specify operation on Channel 287C3 in lieu of Channel 288A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 287C3 at Glasgow are North Latitude 36-53-33 and West Longitude 85-44-48.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-342

In re Applications of

OCEAN PINES LPB BROADCAST CORP.	File No. BPH-870406KF
Malcolm Kahn, George V. Delson, Allen Skolnick & Saul Hertzig d/b/a OCEAN PINES BROADCASTING COMPANY	File No. BPH-870406KH

For Construction Permit for
New FM Station, Channel 246A,
Ocean Pines, Maryland

Appearances

Robert A. DePont, and *Robert E. Levine* on behalf of Ocean Pines LPB Broadcast Corp.; *Henry A. Solomon* on behalf of Malcolm Kahn, George V. Delson, Allen Skolnick & Saul Hertzig d/b/a Ocean Pines Broadcasting Company.

DECISION

Adopted: June 29, 1990; Released: October 10, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN. Board Member BLUMENTHAL issuing Concurring Statement; Board Member ESBENSEN issuing Separate Statement.

Board Chairman MARINO:

1. The two remaining applicants in this case both propose to establish a new FM station in Ocean Pines, Maryland (which, notably, is in close proximity to Fenwick Island, Delaware). In his *Initial Decision* (I.D.), 4 FCC Rcd 7767 (1989), Administrative Law Judge (ALJ) Edward J. Kuhlmann dismissed the application of Ocean Pines LPB Broadcast Corp. (Ocean Pines) pursuant to the Commission's inconsistent or conflicting application rule, 47 CFR §73.3518, because Dr. Leonard P. Berger, Ocean Pines' sole stockholder, had been found in another proceeding, *Key Broadcasting Corp.*, 3 FCC Rcd 6587, 6589 (ALJ 1988), to be "the real-party-in-interest" and "in control" of an earlier-filed application to establish a new FM station at Fenwick Island, Delaware, and that the 1 mv/m contours of these two proposed facilities overlap each other. (*See* I.D., para. 45.) At oral argument in this proceeding held on April 25, 1990, Ocean Pines' new counsel urged that two issues are dispositive here: First, whether the findings in the *Key* case, if affirmed by the Board, justify the ALJ's action dismissing Berger's application; and second, whether Berger "has had a fair opportunity to litigate those issues." (Tr. 108-109). The Board will affirm the ALJ's dismissal of Ocean Pines' application for the reasons set out below.

BACKGROUND

2. On July 12, 1985, Fenwick Island Broadcast Corporation and Leonard P. Berger, collectively doing business as Fenwick Island Broadcast Limited Partnership I (Fenwick LP) filed an application for a new FM Station at Fenwick Island, Delaware. Berger held an 80% equity interest in Fenwick LP until April 2, 1987, shortly before he filed Ocean Pines' present application in this proceeding on April 6, 1987. *Key*, 3 FCC Rcd at 6592, paras. 60-62.

3. In *Key*, the Fenwick LP application was consolidated for hearing with several competing applications, and the presiding ALJ there designated the following special issues for hearing:

> (a) To determine whether Leonard Berger, M.D., is the real party in interest to the application of Fenwick L.P.;
>
> (b) To determine whether, in light of Dr. Berger's interest in an application for a construction permit for a new FM broadcast station at Ocean Pines, Maryland, and the existence of an overlap of the 1 mv/m contours of the Ocean Pines and Fenwick L.P. proposals, the continued prosecution of the Fenwick L.P. application violates the provisions of Section 73.3518 of the Commission's Rules, prohibiting inconsistent applications.

Key, 3 FCC Rcd at 6587 para. 6. After a trial type hearing was held on these issues, the *Key* ALJ released his *Initial Decision*, there containing specific findings and conclusions concerning the "real-party-in-interest" and the inconsistent application issues. (*See Key* I.D., paras. 30-62; 138-148). The "real-party-in-interest" issue was resolved against Fenwick LP, but that applicant was *not* disqualified; instead, Fenwick LP was awarded "no decisive comparative credit for [its] flawed ownership proposals". *See* 3 FCC Rcd at 6599.

4. In this proceeding, Ocean Pines' application was consolidated for hearing with several other competing applications by *Hearing Designation Order* released August 3, 1988, 3 FCC Rcd 4641 (1988) (HDO). The HDO referred to the issue which had been designated in *Key*, and placed Berger on notice that if he received a construction permit here "its grant shall be without prejudice to whatever action, if any, the Commission may deem appropriate in light of the outcome" of the *Key* case. *Id.*, 3 FCC Rcd at 4642. Thereafter, the ALJ in this proceeding specified the following issues (I.D., para. 1):

1. To determine whether the findings and conclusions about the conduct of Leonard P. Berger, as a real-party-in-interest in *Key Broadcasting Corporation*, 3 FCC Rcd 6587 (ALJ 1988), should disqualify Ocean Pines LPB Broadcast Corp.

2. To determine whether Ocean Pines LPB Broadcast Corp.'s application violates §73.3518 and should be dismissed.

An appeal of the ALJ's designation of these issues was denied by the Board wherein we agreed that Ocean Pines should not be permitted to collaterally attack the findings in the earlier *Key* case. *See Ocean Pines FM Partnership*, 4 FCC Rcd 3490, 3491 (Rev. Bd. 1989).

5. Later, in his I.D., the ALJ reported that at the hearing in the instant proceeding (I.D., para. 45; emphasis added):

> Leonard Berger was provided with an opportunity to show why his representations in the Key Broadcasting Corporation case should not disqualify him here. *He chose not to introduce any new evidence on the issue*. Instead, he urges that the decision in Key Broadcasting Corporation did not hold that the applicant Fenwick Island LP should be disqualified but that Leonard Berger should be considered an active partner in the applicant.

After summarizing the critical findings in the *Key* case (I.D., paras. 43-44), the ALJ concluded here that while the natural inference and implication of the *Key* case "is that Leonard Berger misrepresented his role in Fenwick Island LP from the outset, the presiding officer [in *Key*] did not disqualify Fenwick LP or consider whether the applicant should be disqualified." I.D. para. 46.

6. In *Key*, the Section 73.3518 issue had been resolved in favor of the Berger applicant because:

> The issue was added on the strength of Dr. Berger's application filed for a frequency in Ocean Pines, Maryland. However, the Ocean Pines application was filed after the application for Fenwick Island was filed. If either of these two applications are inconsistent, it would have to be the Ocean Pines application and not the Fenwick Island application. The Section 73.3518 issue has to be and IS RESOLVED in Fenwick L.P.'s favor.

In addressing this issue here, the ALJ held that the findings and conclusions in *Key* demonstrated that Berger's "proposal for Ocean Pines violates Section 73.3518." I.D. para. 46. The ALJ reasoned that (*id.*, at paras. 47-48; emphasis added):

> Section 73.3518 provides that "[w]hile an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by or on behalf of or for the benefit of the same applicant, successor, or assignee." While Berger's Fenwick Island proposal has been pending, he applied for Ocean Pines. The 1 mV/m contours of the two proposals overlap. Although the names are different, *control is exercised by Leonard Berger over both the Fenwick Island and Ocean Pines applicants. Key Broadcasting Corporation*, 3 FCC Rcd 6587, 6598 (1988). LPB's claim that Berger deliberately sought to shed his ownership in Fenwick Island LP before he applied for Ocean Pines is beside the point since it has been found, after a hearing, that he did not.
>
> A majority interest in two applicants held by the same persons or entity violates the inconsistent application rule. The Commission has held that under those circumstances the appropriate action to take is the dismissal of the latest filed application. *Big Wyoming Broadcasting Corp.*, 2 FCC Rcd 3493, 3494 (1987), *citing See Agnes J. Reeves Greer*, 45 F.C.C. 2272 (1965). LPB was aware at the outset that Leonard Berger's application in this proceeding might be jeopardized by his actions in Fenwick Island. Because LPB's application violates §73.3518, it will be dismissed.

DISCUSSION

7. *Real-Party-In-Interest-Issue:* At the outset we are faced with a persistent contention that "the gravamen of the real-party-in-interest issue is intent to deceive" which Ocean Pines advanced in its exceptions, at oral argument (Tr. 118), and in a subsequent written Supplement filed May 18, 1990. It emphasizes the proposition that an intent to deceive, which lies at the core of all misrepresentation-like issues, must be proven before an applicant may be disqualified on a real-party-in-interest issue, citing *Tequesta Television, Inc.*, 64 RR 2d 497, 498 (Rev. Bd. 1987), and also submits that this issue does "raise a character matter." Tr. 145-146. In sum, Ocean Pines urges that "in order to find conduct of the alleged real-party-in-interest to be disqualifying, there must be findings of misrepresentation, intent to deceive, and/or lack of candor; and, absent such findings, disqualification of the applicant would be improper." Supplement p. 3. Ocean Pines also points out that even counsel for its opponent in this case conceded at oral argument that the ALJ in *Key* did not make such findings. Tr. 142-144.

8. We do not have to reach these arguments because a review of the Initial Decisions in both *Key* and *Ocean Pines*, *see* paras. 5-6, *supra*, establishes that Berger was not disqualified on the real-party-in-interest issue. In his I.D. here, the ALJ did indicate that the implication of the *Key* conclusions "is that Leonard Berger misrepresented his role in the Fenwick LP application", but he also specifically recognized that the presiding ALJ in *Key* "did not disqualify" or even consider whether Fenwick LP "should be disqualified." I.D. at para. 46. Accordingly, the ALJ held that the Section 73.3518 issue was dispositive here. Thus, we do not have to reach the arguments concerning the nature of the real-party-in-interest issue which was of "no decisional significance." *See Tri-State Broadcasting Co., Inc.*, 5 FCC Rcd 3727 para. 9 (Rev. Bd. 1990).

9. *Inconsistent Application Issue* : Section 73.3518 is part of the Commission's processing rules and is designated to bar, at the threshold, an application which is inconsistent or in conflict with a previously filed application. Here, if the two applications are found to be under "common control" of Berger when his second (Ocean Pines) application was filed, that latter application would violate the Commission's multiple ownership rules because of prohibited 1 mv/m overlap. Indeed, it is undisputed that the 1 mv/m service areas of the two stations would result

in substantial prohibited overlap. Further, Ocean Pines disputes at great length the determination that Berger, in fact, controlled the Fenwick application at all times, and especially *after* he decided to file the Ocean Pines application.

10. We agree with Ocean Pines that the Board is obliged to first decide whether the findings and conclusions in *Key* are accurate (*i.e.*, supported by a preponderance of the evidence in that record). Exceptions were filed with the Board in *Key*, and that case was fully briefed and argued, but was not decided by the Board because the parties entered into a joint settlement agreement (which was approved and that proceeding terminated). *See Key Broadcasting Corp.*, 5 FCC Rcd 1986 (Rev. Bd. 1990)(application for review pending). However, our previous ruling in this case (*see Ocean Pines FM Partnership, supra*, 4 FCC Rcd at 3491), specifically indicated that the findings in *Key* would be binding here only if affirmed on appeal. Since the ALJ's action dismissing Ocean Pines rested squarely on the findings and conclusions in *Key*, the Board must conduct its own review of the record to insure that it supports the ALJ's pivotal conclusion that "control is exercised by Leonard Berger over both Fenwick Island and Ocean Pines applicants." I.D. at para. 47.

11. Until the most recent oral argument in this case, Ocean Pines' initial counsel, Robert E. Levine, represented both Fenwick Island LP and Ocean Pines at both hearings and filed exceptions before the Board. Ocean Pines' exceptions, which he prepared, incorporated (Br. 11, note 9) the more specific exceptions he had filed in the *Key* case. Since the Board had earlier heard oral arguments on those exceptions, and since consideration of those more specific exceptions will conduce to the proper dispatch of the Board's review of this case and fairness to an applicant whose application has been dismissed, we will review the record in the light of all exceptions. The following findings, which support the dismissal of the Ocean Pines application, are based largely upon the I.D. in *Key*, and have been slightly modified in the light of the exceptions and oral argument in both *Key* and *Ocean Pines*. The transcript citations contained in the following paragraphs (13-28) are to the *Key* proceeding.

12. The original principals of Fenwick L.P. were Leonard P. Berger, M.D., 80 percent limited partner, and Fenwick Island Broadcast Corporation, a Maryland corporation, 20 percent general partner. The corporation's original shareholders, officers, and directors (as of July 11, 1985) were: Sharon V. Lyon, President, Director and 49 percent shareholder; Lester L. Green, Vice President, Treasurer, Director and 20 percent shareholder; Alfred J. Stewart, Secretary, Director and 20 percent shareholder; and Elijah Saunders, M.D., Vice President, Director, and 11 percent shareholder. (Fenwick LP Exh. 1).

13. Prior to becoming involved with Fenwick L.P., Berger was active in the cable television business (Tr. 599, 601, 602), entering the cable television industry in 1971 as a founder, officer, director, and stockholder in Calvert, a Baltimore county cable system (Tr. 599). In 1978, he became President of Calvert (Tr. 601) and ran the company's day-to-day affairs (Tr. 619). Berger was also active in an unsuccessful applicant for a Baltimore city cable television franchise and ran that applicants' day-to-day affairs as well (Tr. 619). He met Green, one of the original principals in Fenwick L.P., at the public hearings in connnection with the city cable franchise (Tr. 616-17).

14. Berger and Dr. Elijah Saunders are "life-long" friends (Tr. 643). They met at age 15, and were college roommates and later classmates in medical school (Tr. 643). Berger met Stewart, another original principal in Fenwick L.P., through Saunders (Tr. 617). Berger describes himself as a friend and advisor to Saunders and Green (Tr. 642). Berger "recommended" Saunders for the position of Vice President of the University of Maryland Hospital, a position which Saunders now holds (Tr. 643, 798), and Berger speaks with Saunders frequently (Tr. 643).

15. Robert Levine, who also represented Calvert in its cable television business, periodically contacted Berger with information about "window openings" (Tr. 637), to apply for new broadcast facilities. Some two months prior to the tendering of Fenwick L.P.'s application, Levine informed Berger of an opportunity to apply for a new radio station in Fenwick Island (Tr. 638-39). Levine also explained to Berger the nature of minority preferences in the comparative hearing process (Tr. 639). Berger then informed Lyon, and they contacted Saunders, Stewart and Green about the Fenwick Island opportunity (Tr. 639).

16. Berger testified that he brought together Lyon, Saunders, Stewart, Green, and himself as an applicant group for Fenwick L.P. because he wanted to "do something" for these people (Tr. 622-23). Prior to the filing of the application, Berger and the other principals agreed that Berger was to hold an 80% interest in Fenwick L.P. as a limited partner (Tr. 640). The remaining 20% was to be held by the other principals as shareholders in a corporate general partner (Tr. 640).

17. After they had agreed, Berger discussed with Lyons that they were going to have to retain an engineer for Fenwick L.P. (Tr. 674-75). He did not confer with the other principals about this decision, nor did he apprise them of the financial arrangement arrived at with the engineer (Tr. 676-79). Significantly, Berger retained the engineer after the time that the principals agreed that he was to be a limited partner (Tr. 673-74).

18. The engineer sent Berger a diagram of an appropriate site for the station (Tr. 672). Berger contacted a real estate agent to find a site, and then purchased an option on a transmitter site for Fenwick L.P. and agreed to make the site available to the partnership (Tr. 672). This is the same site specified in Berger's application in the instant proceeding (Tr. 671).

19. Berger testified that he would own the transmitter site in the event the application was granted; while he "hopes" the partnership will pay him something for the site, he would not "take away" the site in the event they are unable to reimburse him for the cost (Tr. 686-87). The costs required to purchase the site option and the anticipated cost of exercising that option were above and beyond Berger's 80% contribution to the partnership (Tr. 686). According to the minutes of the organizational meeting of the Board of Directors of Fenwick L.P.'s corporate general partner, Saunders was obligated to contribute $110 as payment for 110 shares of stock (FIC Exh. 6, pgs. 5, 6). Lyon was obligated to contribute $490 for 490 shares of stock (*id.*, p. 3). Green was obligated to contribute $200 for 200 shares of stock (*id.*, p. 4), and Stewart was obligated to contribute $200 for 200 shares of stock (*id.*, p. 5).

20. Berger purportedly "resigned" from the Fenwick partnership on April 2, 1987, after deciding to apply for the FM station at issue here (Tr. 626, 688-89). He did so

after being advised by Levine that, because of the Commission's rules, he could not continue in Fenwick L.P. and prosecute an application for Ocean Pines, Maryland (Tr. 626).

21. When Dr. Berger "withdrew" from Fenwick L.P., he sold his interest to Lyon for $10.00 and other considerations" (Tr. 694). Berger described the "other considerations" as his "right to apply for another license" (Tr. 694), and believed this was fair because he was leaving "the partnership on its own" (Tr. 691). It is undisputed that Berger and Lyons have had a close personal relationship since 1981. (Tr. 605-609, 710). Dr. Berger was divorced in 1976 or 1977 (Tr. 598), and he first met Lyon on a trip to Florida in 1980 or 1981, when he went out with her on a blind date (Tr. 602). They shared a residence in Florida for six to twelve months in 1980 or 1981 (Tr. 608-09).

22. Lyon was later hired by Calvert, Berger's cable television company, in 1980 or 1981 as Director of Advertising Sales (Tr. 610). Berger sold his interests in Calvert in September 1983; the sale was finalized in February, 1984 (Tr. 610), and he thereafter established a permanent residence in Ocean City, Maryland in 1984 (Tr. 611).

23. In February, 1985, Lyon moved to Ocean City and was hired by the Sheraton Fontainebleau Inn & Spa (Tr. 611; Fenwick L.P. Exh. 2, p. 2), which is controlled and owned by Berger (Tr. 612, 743). When Lyon moved to Ocean City to work for the Sheraton, she resided temporarily with Berger (Tr. 612). She currently resides in a condominium owned by Berger (Tr. 610, 742).

24. Berger considers himself to be a wealthy man (Tr. 684), while Lyon is from a family of average means (Tr. 711). During their relationship, he has given Lyon monetary gifts when she was in need of money (Tr. 683, 730-31). Berger has also given her non-monetary gifts on many occasions (Tr. 731, 733-34, 736). Lyon testified that, on at least several occasions, these non-monetary gifts have been worth more than $6,000 (Tr. 731).

25. The hearing fee assessed by the Commission in the Fenwick case was due on July 22, 1987. *See Hearing Designation Order*, DA 87-746, released July 1, 1987 at para. 19. Lyon testified that she "hinted" to Berger that she deserved a $6,000 bonus (Tr. 745-46) and she was aware that the Commission's hearing fee was $6,000 (Tr. 746).

26. Berger gave Ms. Lyon $6,000, in July of 1987. (Tr. 682-3), and it was conceeded that he was aware of the Commission's $6,000 hearing fee requirement since he had been informed of the requirements by Levine in connection with his application for the Ocean Pines station (Tr. 685).

27. Berger is uncertain whether he has made other gifts to Lyon during the time in which the Fenwick L.P. application was pending before the Commission (Tr. 684), but Berger further testified that, if Lyon approached him today for money he would probably give her the money again (Tr. 688), and that he had in the past, and would in the future, give her advice about the Fenwick application. (Tr. 695).

28. In sum, the crucial determinations in *Key* established that Berger, after assembling the principals in the Fenwick Island application and agreeing to be a limited partner, maintained firm control over the venture. Levine, who Berger described a "my lawyer" and "a very good friend" (Tr. 648), was retained to represent *both* Berger's Fenwick Island and Ocean Pines applicants. Berger selected Fenwick Island's engineer, and purchased an option on a transmitter site which was to be used by both the Fenwick Island and the Ocean Pines applicants. Since 1981, Berger had maintained a close personal and business relationship with Lyon, his "protegee," providing her with jobs, housing, as well as substantial gifts of money and jewelry, and, later in 1987, transferred his 80% interest in the Fenwick Island application to her for insignificant consideration. Perhaps most significant was the fact that after Berger withdrew from the Fenwick application, Lyon obtained the $6,000 hearing fee directly from Berger as well as the fact that he had not in the past, and would not in the future, insulate himself from her management of the Fenwick application. These objective indicators of control (and the ALJ's opportunity to observe the witnesses who testified in the Fenwick Island case) support the ALJ's *Key* conclusion that (I.D. at para. 147):

> . . . it was Dr. Berger alone who has been the life blood of Fenwick L.P.'s entire proposal. In April of 1987, Dr. Berger decided to apply for a frequency in Ocean Pines, Maryland, and upon counsel's advice, withdrew from Fenwick L.P. But there is no evidence indicating that Dr. Berger has extricated himself from his position of control in relation to this application nor that his interest will not continue through Ms. Lyon in the future. On the contrary, the record indicates that even after his withdrawal from Fenwick L.P., Dr. Berger has continued to be involved with the activities and decisions made by the partnership. He has provided Ms. Lyon with the $6,000 hearing fee in order that Fenwick L.P. could continue in this proceeding. He has stated his willingness to continue to provide funds to Ms. Lyon for use in this proceeding. He owns the option to purchase Fenwick L.P. transmitter site . . . . There can be no doubt that Dr. Berger potentially and even now controls the operation of Fenwick L.P. There is ample proof that Ms. Lyon and Dr. Saunders are too beholden to Dr. Berger to be considered independent of his control. It must be concluded that Dr. Berger is the real party in interest.

29. Thus, the record before us fully supports the conclusion that the limited partnership in Fenwick was a "sham" when measured by any of the legal standards which have been utilized in the past. *See Metroplex Communications, Inc.*, 4 FCC Rcd 8149 (Rev. Bd. 1989), *rev. denied*, FCC 90-294, released September 19, 1990. More importantly, all of the objective indicators require us to affirm the ALJ's findings that Berger was "the real-party-in-interest" and "in control" of the Fenwick application from the beginning, and was still in control of that application when he filed the instant Ocean Pines application. It is undisputed that the proposed service areas of these two applications substantially overlap in violation of the Commission's multiple ownership rules, and the inconsistent applications rule. Controlling Commission precedent establishes, as the Administrative Law Judge correctly concluded, that the inconsistent application rule was violated when the Ocean Pines application was filed, *see Margaret Escriva*, 4 FCC Rcd 5294 (1989), and that the

appropriate remedy is the dismissal of the later-filed Ocean Pines application. *Big Wyoming Broadcasting Corp.*, 2 FCC Rcd 3493, 3494 (1987).

30. *Collateral Estoppel*: At oral argument, new counsel for Berger argued that, if the Board affirms the findings in the Fenwick Island case, those findings cannot be applied against Berger here because Levine did not formally represent Berger in the Fenwick Island hearing. However, the record establishes that Berger was given specific notice of the issues to be tried in both cases (*supra*, paras. 3-4); Levine was counsel of record in both cases; and Berger considered Levine "my" lawyer, and was satisfied with Levine's joint representation of his common interests. Accordingly, as a factual matter, there is no reason why the Board should modify its previous ruling that Berger should not have been permitted to relitigate the facts established in the Fenwick Island case "where the parties and issues are similar or interrelated." *See Ocean Pines*, *supra* 4 FCC Rcd at 3491.

31. Departing significantly from the exceptions filed by Ocean Pines' erstwhile counsel, its current counsel at oral argument contended that the adverse real-party-in-interest findings of *Key* cannot be held against Berger in the instant case, because Berger was not a "party" to the *Key* case and had no opportunity to fully litigate that issue. *See* Tr. 109, 120-132, 150-154. In other words, while this precise legal argument was not made specifically in Ocean Pines' original exceptions (and might therefore be ignored, *see* 47 CFR § 1.277(a)), current counsel essentially argues that the doctrine of collateral estoppel cannot be used to hold the *Key* findings and conclusions against it, because Berger was not a "party" in *Key*, merely a witness.

32. We made clear in our interlocutory *Ocean Pines* order that, inasmuch as a full evidentiary hearing had been held in *Key* to determine whether Berger was a real-party-in-interest there, the ALJ here need not relitigate those findings in this proceeding, because we would rule on the exceptions in *Key* going toward those findings. *See* 4 FCC 2d at 3491. However, as indicated, *Key* was settled before we ruled on those exceptions. Consequently, our review of Ocean Pines' instant exceptions has necessarily required that we give a *de novo* review to the record in *Key*, and to all of the exceptions filed in that case. We have done so and are in accord with the *Key* ALJ that Berger was not only a real-party-in-interest in that case, but actually controlled the applicant fronted by Lyon.

33. Notwithstanding, new counsel maintained at oral argument that collateral estoppel was unavailable, and, as a result, Berger was, by virtue of our prior *Ocean Pines* order, denied an opportunity to adequately challenge the adverse findings in *Key*. Just prior to our 1989 *Ocean Pines* order, we had reviewed the leading authorities at length in *Montgomery County Media Network*, 4 FCC Rcd 3749 (Rev. Bd. 1989), and set out the following prequisites to the application of collateral estoppel:

> (1) an issue identical to one that was previously litigated and that was essential to the previous decision;
>
> (2) the prior adjudication must have reached the stage of being a final judgment on the merits;
>
> (3) the party to be estopped must have been a party to the prior litigation, or in privity with such a party;
>
> (4) the estopped party must have had a full and fair opportunity to litigate the issue in the prior proceeding.

In *Montgomery County*, we held that because the subject applicant had merely been a discredited witness in a different case, collateral estoppel was unavailable and that the applicant's conduct would have to be relitigated in a second proceeding.

34. At the oral argument, counsel urged, in essence, that Berger's posture in *Key* was identical to that of the witness in *Montgomery County*, and that he was not "*a party to the prior litigation, or in privity with such a party* . . . ." We find this eleventh-hour argument to be hollow, at best. Unlike *Montgomery County*, *the* issue in *Key* was whether, in fact, Berger yet remained a real-party-in-interest, despite his alleged withdrawal. The ALJ there found, and we here affirm, that Berger was and remained *the* real-party to, and in control of, the *Key* application. There, as here, Berger's applicant was represented at hearing by "my attorney" (*see supra* para. 28); Berger was given an opportunity in *Key* to give full evidence in defense of the real-party-in-interest issue; he does not claim that any pertinent evidence was omitted; he was given an opportunity by the ALJ in the instant proceeding to present additional explanatory evidence on the issue (but declined, *see supra* para. 5); [1] and his instant exceptions challenge fully and vigorously the adverse conclusions against him in *Key*. And, from the outset of the instant proceeding, Berger was acutely aware of the adverse *Key* conclusions, as well the potentially fatal impact on the basic qualifications of Ocean Pines.

35. We hold that Berger was, at a minimum, "in privity" with the discredited *Key* applicant, and that collateral estoppel applies. Berger had every opportunity to present his evidence in support of his version of his relationship to Lyon and the *Key* applicant to the FCC, and convinced neither the *Key* ALJ nor this Board that Berger was not the *de facto* party in control of the *Key* applicant. We therefore affirm the dismissal of Ocean Pines' application and the grant of the application of Ocean Pines Broadcasting Company. [2]

36. ACCORDINGLY, IT IS ORDERED, That the application of Ocean Pines LPB Broadcast Corp. (BPH-870406KF) IS DISMISSED with prejudice, that the application of John Hopkins Broadcasting IS DISMISSED, pursuant to 47 CFR 1.276(c) and that the application of Ocean Pines Broadcasting Company (BPH-870406KH) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

FOOTNOTES

[1] At hearing, Ocean Pines did offer revised Exhibit 4A, a letter from Dr. Berger to Ms. Lyons dated April 2, 1987, announcing his resignation from the Fenwick Island application, but this cumulative evidence was properly rejected by the ALJ because it did not materially add to the factual record in *Key*.

[2] The release of our *Decision* in this case was held in abeyance pending final settlement of *Key*. Had *Key* not settled, we would have addressed the exceptions directly therein.

CONCURRING STATEMENT OF BOARD MEMBER NORMAN B. BLUMENTHAL

I reach the same destination as the majority *Decision*, but would do so via a slightly different route.

Ex necessitate (*Key Broadcasting Corp*, 3 FCC Rcd 6587 (ALJ 1988), settled before we addressed the exceptions), we have here reviewed the *Key* record and exceptions to determine whether the ALJ there erred in finding Dr. Leonard P. Berger to be a real-party-in-interest to the applicant Fenwick Island Broadcast Limited Partnership I, and not merely the (80%) "passive limited partner" he claimed initially to be. The majority *Decision* here finds that the *Key* ALJ was manifestly correct in his adverse ruling under that critical issue.

Having found – after a thoroughgoing review of the *Key* record, the *Key* initial decision, the exceptions thereto, and the Ocean Pines LPB exceptions to the instant initial decision that rehash at length the *Key* real-party-in-interest evidence – that Dr. Berger was not merely *a* party to his *Key* application but the *controlling* party, I would disqualify his instant applicant, Ocean Pines LPB, on that basis alone. The law has long held that real-party-in-interest issues are *basic* qualifying issues, not *comparative* ones, *see Massilon Broadcasting Co., Inc.*, 22 RR 218, 220-221 (1968); *see also Rayne Broadcasting Co., Inc.*, 5 FCC Rcd 3350, 3353 (Rev. Bd. 1990); *Tequesta Television, Inc.*, 2 FCC Rcd 7324, 7325 (Rev. Bd. 1987), [1] and Dr. Berger is therefore ineligible to receive this Ocean Pines construction permit. [2]

In short, the record in *Key* corroborates this: Dr. Berger, deploying his inamorata as a distaff front, applied for an FM permit in Fenwick Island. He shortly thereafter filed for this permit in Ocean Pines. If he were deemed a cognizable party to both applications, a cross-ownership rule conflict stood squarely in his path. While he putatively "withdrew" from his 80% equity interest in his Fenwick Island applicant, he maintained his *de facto* interest by and through Lyons, who needed, *inter alia*, his funding to pay even the hearing fee. His is not the first applicant to lurk behind his woman's petticoat, *see, e.g., N. E.O. Broadcasting Co.*, 103 FCC 2d 1031 (Rev. Bd. 1986), *review denied*, 1 FCC Rcd 380 (1986); *see generally Richard E. Bott, II*, 4 FCC Rcd 4924, 4329-4330 (Rev. Bd. 1989), *review denied*, 5 FCC Rcd 2508 (1990), but the precedent does not make more palatable the practice.

FOOTNOTES TO CONCURRING STATEMENT

[1] Ocean Pines LPB's exceptions rely on *Tequesta* for the proposition (in its view) that, since the *Key* ALJ did not find misrepresentation or lack of candor on the part of Dr. Berger, Berger cannot be considered unqualified to control a license, despite the adverse real-party-in-interest conclusions in *Key*. I read *Tequesta* differently: There, in approving a settlement, the Board (of which I was *definitely* not a panel member) noted that although the ALJ had below rejected the "integration" credit of one of the settling applicants, he had not added a real-party-in-interest issue against, and therefore did not formally disqualify, that applicant. The *Tequesta* Board, decrying a tendency in some contemporary cases to reach *de facto* control solely through the *comparative* issue of "integration," enjoined our ALJ's to add, where appropriate, discrete real-party-in-interest issues so that the culpable applicant was not simply deprived of "integration" credit, but subject to basic disqualification. The *Key* ALJ effectively comported with the *Tequesta* ideal. He added a specific real-party-in-interst issue and resolved it adversely to what was plainly, in fact, Dr. Berger's applicant. *Tequesta*, as I read it, provides little succor for Ocean Pines LPB.

In a supplement to its exceptions, Ocean Pines LPB argues further that, despite his adverse conclusions, the *Key* ALJ did not disqualify Dr. Berger's applicant, and that its opponent here concedes that Dr. Berger was not found to have been untruthful. However, we have the public interest to protect and I agree with the initial decision in the instant case that a necessary implication of *Key* "is that Leonard Berger misrepresented his role in the Fenwick LP application" (*see ante*, para. 8). That is also the legal implication of *Tequesta*. But above and beyond the "implications" of the adverse *Key* conclusions, are facts that reveal glaringly Dr. Berger's several attempts at deception in the Fenwick Island case: first, when he claimed to be merely a "passive" investor, with Lyons an independent agent in full control; and, second, when he alleged to have "withdrawn" (for $10) as a principal, so as not to conflict impermissibly with this Ocean Pines application. In suggesting that Lyons would unilaterally control the Fenwick Island facility, while he controlled a competing station just down the beach, Dr. Berger plainly intended to deceive, and the record underlying the real-party-in-interest issue proves conclusively that Dr. Berger's was one and the same as the Lyons' share. I see neither innocence nor candor in his conduct in these companion cases.

[2] As the majority *Decision* explains, with my endorsement, Ocean Pines LPB's new counsel (with "the brimming vitality of a fresh paladin," *San Joaquin Television Improvement Corp.*, 96 FCC 2d 617, 618 (Rev. Bd. 1984)) raised for the first time at oral argument the claim that collateral estoppel does not lie because Dr. Berger was not a "party" in the *Key* case. Procedural estoppel aside, this argument is not without seductive qualities, but is beneath the surface specious to the point of hubris. In *Key*, Dr. Berger was on clear notice that if he was found to be a party there, his instant application was subject to summary dismissal under the cross-ownership rules. He was thus more than a mere witness; he was defended by "his" lawyer (in that case and this) to whom he paid good money; and he lost the vital issue by overwhelming evidence. To now claim that Dr. Berger was not a "party" or "in privity" with Lyons in *Key*, or that the defense of that issue was somehow handicapped, is perhaps a colorable "lawyers argument," but nothing more. Substantively and procedurally, Dr. Berger had every reasonable opportunity to prove to the FCC that he did not control his *Key* applicant; he does not here claim any additional evidence or testimony; he has had his say in two sets of exceptions; he has had a *de novo* review of the record; and he now has a unanimous Board agreeing with the *Key* ALJ on the pivotal issue. We need not hold another hearing to "make the rubble bounce."

SEPARATE STATEMENT
OF
BOARD MEMBER ERIC T. ESBENSEN

Hair-splitting technicalities aside, the Board has affirmed the real-party-in-interest conclusions of the *Initial Decision* in *Key Broadcasting Corp.*, 3 FCC Rcd 6587 (1986), and determined that Berger's instant application for Ocean Pines, Maryland to be inconsistent with 47 CFR §73.3518.

I respectfully submit that, irrespective of the theory of the disqualification of Berger's Ocean Pines LPB Broadcast Corporation, such disqualification is the mandatory result. Thus, I specifically agree with the Concurring Statement that a real-party-in-interest issue, by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed. *Rayne Broadcasting Co., Inc.*, 5 FCC Rcd 3350, 3353 (Rev. Bd. 1990) (Board declares "could not grant" application in the face of "real-party-in-interest" issue "without determining whether [applicant] is basically qualified").

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RELIGIOUS	**MM Docket No. 83-911**
BROADCASTING	**MM Docket Nos. 83-914 to 83-916**
NETWORK	**MM Docket No. 83-919**
San Bernardino,	**MM Docket Nos. 83-921 to 83-923**
California	**MM Docket No. 83-925**
	MM Docket No. 83-928
et al.	**MM Docket No. 83-930**

For Construction Permit
For New Television Station

ORDER

Adopted: September 24, 1990; Released: October 17, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. The Review Board has before it multiple, joint requests for approval of settlement agreements, filed September 20, 1990, by Sandino Telecasters, Inc. (Sandino), the proposed permittee, and each of the remaining applicants in the above-captioned proceeding. Accompanying the requests are (incomplete) copies of the respective settlement agreements, each of which contemplates the the dismissal of the respective applications and the grant of Sandino's.

2. Section 73.3525 of the Commission's Rules, 47 CFR § 73.3525, which governs settlement agreements, provides that the "joint request[s] shall be accompanied by [copies] of the agreement[s]." However, the consideration to be paid each dismissing applicant has here been redacted in all ten discrete agreements. While, under separate cover, "a complete copy of each Settlement Agreement with the consideration shown thereon is being filed with the Chairman of the Board for *in camera* review if necessary," the cover letters request that the settlement amounts be treated as confidential and "irrelevant" to the Board's action on the ten joint settlement agreements.

3. The rules require the formal filing (*i.e.*, with the FCC Secretary, *see* § 1.4(c)), on the record of the *full* terms of any settlement agreement, and the filings by the parties here do not comply. The Board will not act upon the joint requests until the parties have conformed with the rule.[1]

4. ACCORDINGLY, IT IS ORDERED, That the parties ARE DIRECTED to file complete copies of each settlement agreement.[2]

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] Any request for confidentiality should also conform to Section 0.459 of the Rules, 47 CFR § 0.459; and the parties are reminded that "casual" requests for confidentiality will not be honored, *see Seven Hills Television Co.*, 2 FCC Rcd 6867, 6893 n. 37. We note, though, that all of the joint requests state that "if disclosure is deemed necessary by the Review Board, such disclosure will be made promptly."

[2] So as not to unduly interfere with the proposed settlements, counsel has been advised telephonically of the terms of this order, and the parties have been provided with a pre-publication copy thereof.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 89-88

In the Matter of

Inquiry Into the Existence of
Discrimination in the Provision
of Superstation and Network
Station Programming

ORDER

Adopted: September 25, 1990 Released: September 26, 1990

By the Common Carrier Bureau:

1. The National Rural Telecommunications Cooperative (NRTC) has filed a motion to extend the time in which to file reply comments in the above-captioned proceeding. As discussed below, NRTC's motion is granted in part.

2. On June 21, 1990 the Commission issued a *Further Notice of Inquiry* (*Further Notice)* in this proceeding in order to determine whether satellite carriers are discriminating against distributors to home earth stations in favor of cable operators in the provision of superstation and network station programming. In connection with this *Further Notice*, satellite carriers were directed to provide the Commission with certain contracts as well as information on the comparative costs of serving home dish distributors versus cable operators, SMATV systems and wireless cable systems. Two satellite carriers, Eastern Microwave, Inc. (Eastern) and United Video, Inc. (United), requested confidential treatment for this cost information.

3. On September 20, 1990, NRTC filed a request pursuant to the Freedom of Information Act (FOIA) and Section 0.461 of the Commission's rules to obtain copies of the cost information exhibits filed by Eastern and United. NRTC also filed a motion to extend the time to file reply comments, currently scheduled to be filed on September 28, 1990, "until thirty days after the Commission releases the requested costing information or otherwise disposes of NRTC's FOIA request by final Order." NRTC asserts that it needs to review the cost information in order to prepare meaningful reply comments.

4. Although it appears appropriate to allow some additional filing time while the Common Carrier Bureau is making a determination on NRTC's FOIA request, the amount of time requested by NRTC is excessive and, if granted, would unduly delay Commission action in this proceeding. Therefore, the date for filing Reply Comments is extended until October 23, 1990. Such an extension will afford the Bureau sufficient time to consider and rule on the FOIA request as well as give all parties the opportunity to determine the course of action they will take as a result of the Bureau's action.[1] Of course, if additional information is included in the public record of this proceeding as a result of the FOIA action, parties will be given additional time to review and comment on this information.

5. Accordingly, IT IS ORDERED that the deadline for filing reply comments in the above-captioned proceeding is extended until October 23, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] *See* procedures in Section 0.461 of the Commission's rules, 47 C.F.R. § 0.461.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Puerto Rico Telephone Company
Equal Access Conversion Schedule

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 1990; Released: October 2, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

A. Summary

1. On April 6, 1990, the Puerto Rico Telephone Company (PRTC)[1] filed a request for extension of time from September 30, 1990 to December 31, 1990, to complete equal access conversion in Puerto Rico.[2] In this Order, we grant PRTC a waiver of the deadline for equal access conversion to December 31, 1990, and require that PRTC provide American Telephone and Telegraph Company (AT&T) and any other off-island carrier with the services and facilities that they request for use in providing their own operator services, coincident with the conversion to equal access of each cluster of end offices. [3]

B. Background

2. In the *PRTC Waiver Order*, the Common Carrier Bureau, *inter alia*, extended the deadline for PRTC's conversion to equal access from December 31, 1989 to September 30, 1990.[4] We also waived the existing equal access presubscription balloting requirements to the extent necessary to permit use of the timetable proposed by PRTC.[5] PRTC was directed to comply with existing Commission requirements concerning equal access presubscription balloting in all other respects,[6] and to provide AT&T and any other off-island carrier, no later than September 30, 1990, with the services and facilities that they request for use in providing their own operator services. We also declined to require PRTC to implement equal access on a phased basis.

II. END OFFICE CONVERSION SCHEDULE

A. PRTC Petition

3. PRTC announced the beginning of the equal access conversion process on March 30, 1990.[7] PRTC requests an extension of time to December 31, 1990, to complete conversion to equal access in Puerto Rico according to a schedule that provides for the conversion of eleven clusters beginning September 28, 1990, and ending with the conversion of cellular service to equal access on December 21, 1990.[8] PRTC cites several reasons for an extension of the equal access deadline. First, PRTC states that threats of labor unrest due to the proposed sale of PRTC caused "substantial uncertainty as to when PRTC would be able to provide a reliable schedule." Second, recovery from Hurricane Hugo required allocation of personnel and materials to repair an estimated 30 million dollars in damages. Third, PRTC has expanded equal access to include cellular and public telephones, as well as coordination with PRCA, providing equal access conversion for nearly one million access lines in total. Finally, PRTC states that the interexchange carriers (IXCs) "unanimously asked PRTC to delay the formal announcement of equal access until sixty days" after distributing the final version of PRTC's Equal Access Interexchange Carriers' Guide (PRTC's IXC Guide) to enable the carriers to finalize their market plans.[9]

B. Positions of the Parties

4. United States Telephone Association (USTA) supports PRTC's request for an extension of the equal access deadline to December 31, 1990.[10] USTA states that PRTC has demonstrated "good cause," and urges that we grant the extension. AT&T takes no position on PRTC's extension of time request, but argues that, if the extension is granted, it should be conditioned on PRTC's agreement to provide AT&T and other off-island carriers "with services and facilities required to process their own operator traffic from those exchanges" as each cluster of end offices is converted to equal access.[11] AT&T argues that this requirement is consistent with the *PRTC Waiver Order* that requires PRTC to provide these facilities when PRTC implements equal access. AT&T notes that after equal access conversion no further technical obstacles will exist that prevent PRTC from providing the required facilities and services to AT&T, since ANI will become available as each end office converts to equal access, and separate trunks for operator services can now be provided because PRTC has completed its network reconfiguration.[12]

5. Puerto Rico Telecom Corporation (PR Tele-Com) states that it does not oppose granting PRTC an extension provided that PRTC "abides strictly" to the eleven week schedule and completes conversion on or before December 31, 1990.[13] PR Tele-Com also states that the extension of time should be conditioned on PRTC's release to IXCs of customer non-published numbers, and changes in PRTC's conflict resolution procedures. PR Tele-Com asserts that because of unique customer practices in Puerto Rico, PRTC's decision to withhold non-published main billing and working telephone numbers from the IXCs will cause data processing and account management problems for the IXCs.[14] PR Tele-Com cites various unique customer practices: (1) customers may use the surname of their mother or father; (2) two or more generations may share a house and the name on the account may not be changed as the residence is handed down generation to generation; and (3) people may assume the existing telephone number when they move to a residence without changing the name on the account. Thus, PR Tele-Com argues, "because of certain Puerto Rican social and familial customs," it will be "extremely frustrating" to contact end users with non-published accounts. PR Tele-Com alleges that PRTC has provided the list of unpublished numbers to its affiliates, Telefonica Larga Distancia de Puerto Rico (TLD) and DISCORP, and thus PRTC should also provide the nonpublished numbers to the other IXCs.[15]

6. PR Tele-Com also requests that we require that PRTC adopt a "latest date"[16] rule rather than PRTC's "vehicle priority scheme"[17] for resolving conflicts in a

customer's selection of an IXC.[18] PR Tele-Com asserts that the "latest date" rule expresses the most current preference of the customer regardless of the vehicle the customer uses to make a choice. PR Tele-Com argues that the Puerto Rico market is unique because it is bilingual, and because PRTC is simultaneously implementing equal access and the North American Numbering Plan. PR Tele-Com also contends that PRTC's current procedures do not allow a customer to change its IXC choice pursuant to telephone instructions from the customer, and that the "latest date" rule, without any priority of vehicle, would be far less burdensome to customers.[19]

7. In response to AT&T's request, PRTC states that "as each cluster of end offices is converted, PRTC intends to make available originating ANI and if necessary separate trunk groups to off-island carriers in order to process their operator traffic."[20] PRTC also states that it "fully intends to complete its conversion to equal access in Puerto Rico by December 31, 1990," and "has every intention of abiding by its published schedule for conversion of specific end offices."[21] PRTC claims that it has not provided lists of non-published telephone numbers to TLD and DISCORP, and that PR Tele-Com's "assertions" about how Puerto Ricans use their names and change their telephone numbers are "undocumented and unsupported."[22] Moreover, PRTC argues that strong privacy concerns "would be trampled" by PR Tele-Com's request that non-published numbers be released to the IXCs. Regarding PR Tele-Com's request that PRTC adopt the "latest date" rule, PRTC argues that the issue has previously been discussed with the IXCs and Commission staff and is well within the choices allowed by the Commission to local exchange carriers.[23]

III. DISCUSSION

8. We believe that PRTC has shown good cause for a further waiver of the equal access conversion date originally established in the *Puerto Rico Order*. First, PRTC has detailed several problems it had encountered prior to announcing the beginning of the equal access process on March 30, 1990, that required a reallocation of resources from equal access activities. Second, we are convinced that PRTC will require the additional time it requests because of PRTC's expansion of equal access conversion to include cellular and pay telephones, and its "contemporaneous" conversion with PRCA.

9. Absent this further waiver PRTC would be forced to "flash cut" all end offices by September 30, 1990, to comply with its deadline for equal access conversion. PRTC's original timetable provided for converting all end offices as "simultaneously as possible during the third quarter of 1990, . . . starting 180 days after IXCs are notified of PRTC's plans and ordering requirements."[24] The Commission previously has found that a phased conversion is preferable to a flash cut conversion because of the additional time available to correct errors encountered in converting the first offices.[25] We believe that the phased end office conversion proposed by PRTC in its extension request will provide for a more orderly and manageable conversion process. Moreover, none of the IXCs objects to an extension, although two IXCs request that we require certain conditions for approval of an extension. Accordingly, we grant PRTC's request for extension of time and waive the equal access conversion date to December 31, 1990. Although we do not condition, as PR Tele-Com requests, PRTC's time extension waiver on its strict compliance with detailed end office cluster schedule it has submitted, we rely heavily on PRTC's assertion that it "has every intention of abiding by its published schedule for conversion of specific end offices" in deciding to grant this waiver.[26] We expect, after all the delays experienced thus far in implementing equal access in Puerto Rico, that PRTC will make every effort to maintain the planned schedule of conversions. More importantly, we expect PRTC to complete *all* conversions by December 31, 1990.

10. As requested by AT&T, we condition PRTC's waiver on its provision, as each cluster of end offices is converted to equal access, of facilities and services required by AT&T and other off-island carriers to provide their own operator services to customers served by those end offices.[27] We find this condition consistent with the condition placed on PRTC in the *PRTC Waiver Order* that these facilities and services be provided when PRTC completed its "simultaneous conversion" on September 30, 1990. Now that PRTC will have a phased conversion schedule, it is appropriate that AT&T and other off-island carriers have the facilities and services they need to provide their own operator services as soon as each cluster of end offices is converted.

11. We decline to require PRTC to release nonpublished telephone numbers to off-island carriers without the customer's permission. PR Tele-Com has failed to support its allegations regarding local customs that might justify our disregarding the privacy interests which customers have in their nonpublished numbers.[28] Customers with nonpublished numbers will have an opportunity to respond to the presubscription ballot, and will become aware of equal access implementation from advertising by PRTC and other off-island carriers.[29]

12. We also decline to require that PRTC adopt PR Tele-Com's "latest date" rule for resolving conflicting IXC selections. The Commission's conflict resolution procedures specified in the *Allocation Order* require, *inter alia*, that "the ballot takes precedence" when there is disagreement regarding a customer's primary IXC choice.[30] Only in the *Allocation Waiver Order* were "latest date" procedures authorized, as the Common Carrier Bureau granted waivers to permit LECs voluntarily to implement modified approaches in the disposition of dispute resolution cases.[31] As the Commission subsequently made clear in the *Allocation Reconsideration Order*, however, the Bureau's waivers of the conflict resolution procedures established in the *Allocation Order* were designed only "to allow the LECs flexibility in disposing of customer disputes."[32] The Commission stated that other carriers "are not obligated to incorporate guidelines [from the *Allocation Waiver Order*] insofar as they were designed to facilitate alternative approaches to dispute resolution."[33] The Commission denied petitions "to modify ballot priority for LECs which have not sought waivers,"[34] and other carriers instead are allowed "to continue to give the ballot priority in resolving customer choice discrepancies."[35]

13. There is no LEC waiver request here to implement a "latest date" rule. Instead, PRTC has clearly stated that it plans to use ballot priority procedures. We do not find persuasive PR Tele-Com's arguments that because the Puerto Rico market is bilingual and PRTC is simultaneously implementing equal access and the North American Numbering Plan, we should not apply settled Commission policy in this instance. In fact, these market

characteristics would appear to make a second ballot like the "personal request ballot" especially useful as a means to reduce confusion when there is a problem regarding conflicting information about a customer's selection of an IXC. The *Allocation Reconsideration Order* noted that Ameritech's use of such a second ballot to resolve conflicts between alternative carrier selections is an "efficient method by which the customer can notify the business office of any requested change in IXC designation."[36] Consistent with these findings, and contrary to PR Tele-Com's contentions, we find that PRTC's use of a personal request ballot provides similar efficiencies, and does not create a burden for customers in selecting or changing their carrier choice. Accordingly, we do not find sufficient justification in the record to require PRTC to use "latest date" conflict resolution procedures.

14. Our approval of PRTC's revised priority balloting procedures as consistent with our presubscription balloting requirements does not, of course, speak to PRTC's implementation of those procedures. In August, AT&T complained by letter to the Commission that PRTC had not been providing subscribers with personal request ballots if they called or wrote the PRTC business office, and that TLD personnel had been distributing personal request ballots to subscribers.[37] In response, PRTC stated that it had become aware of a lack of adequate controls on the processing of personal request ballots before AT&T's letter and that it was implementing certain changes in its procedures, such as: (1) modifying PRTC's advertisements to clearly inform subscribers that they can obtain personal request ballots by calling or writing the PRTC business office; (2) retraining PRTC personnel to ensure that they provide personal request ballots in response to a subscriber's telephone call, written request, or visit to a PRTC business office; (3) implementing new controls on the processing of personal request ballots to limit access by off-island carriers, including use of a firm of independent auditors to supervise the process; and (4) reballoting the approximately 15,000 subscribers that had submitted personal request ballots before implementation of these new procedures.[38] PRTC also commissioned an independent audit of the personal request ballots received to date.[39]

15. We also have received several letters from off-island carriers alleging problems in PRTC's implementation of equal access.[40] We remind PRTC of its responsibility to ensure a fair and impartial implementation of equal access. Discrimination by PRTC personnel in favor of TLD, an affiliate, is contrary to the Communications Act and our equal access orders.[41] PRTC may be subject to forfeitures pursuant to Section 208 of the Communications Act if it violates approved presubscription balloting procedures or if it discriminates in the implementation of equal access.[42]

IV. ORDERING CLAUSE

16. Accordingly, IT IS ORDERED, that PRTC's extension of time waiver is GRANTED to the extent described herein subject to conditions.[43]

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] PRTC is a government-owned local and intra-island toll carrier that provides approximately ninety percent of intra-island telephone service in Puerto Rico.

[2] PRTC Request for Extension of Time, April 6, 1990.

[3] We also grant the Puerto Rico Communications Authority (PRCA) a waiver in order to permit it to implement equal access with PRTC by December 31, 1990.

[4] *See* Puerto Rico Telephone Company Equal Access Conversion Schedule, *Memorandum Opinion and Order*, 5 FCC Rcd 118, 120 paras. 22-23 (1989) (*PRTC Waiver Order*). *See also* Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service Off the Island of Puerto Rico, 2 FCC Rcd 6600 (1987), *pets. for recon. pending* (*Puerto Rico Order*).

[5] *PRTC Waiver Order*, 5 FCC Rcd at 121, para. 29. *See also id.* at para. 25 & n. 86. A similar waiver of our equal access presubscription balloting rules was granted to PRCA, a government-owned local exchange and intra-island toll carrier that provides approximately ten percent of intra-island telephone service in Puerto Rico. We approved PRCA's plan "to complete its conversion to equal access, at the latest, early in the fourth quarter of 1990," as PRCA requested. *See* Puerto Rico Communications Authority Equal Access Conversion Schedule, 5 FCC Rcd 2521 (1990) (*PRCA Waiver Order*).

[6] Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985) (*Allocation Order*), *modified*, 101 FCC 2d 935 (1985) (*Allocation Waiver Order*), *modified on reconsideration*, 102 FCC 2d 503 (1985) (*Allocation Reconsideration Order*); Illinois Citizens Utility Board Petition for Rule Making, 2 FCC Rcd 1726 (1987) (*Illinois Petition*).

[7] PRTC Request for Extension of Time at 1.

[8] Clusters 1-10 represent groupings of end offices. Cluster 11 represents the conversion of cellular service. PRTC Request for Extension of Time at Exhibit I. PRTC also requests a time extension or waiver, if necessary, for PRCA since PRCA will not complete equal access conversion by early in the fourth quarter of 1990, as originally planned. PRTC notes that the current schedule provides for PRCA's end offices to be converted "in two groups, one in mid-October and the other in mid-December." PRTC Request for Extension of Time at 4 note 6.

[9] *Id.* at 4-9.

[10] USTA Comments at 1.

[11] AT&T states that these enhancements include Automatic Number Identification (ANI), and separate trunk groups from PRTC's access tandems or end offices to the off-island carrier's operator services facilities. AT&T Comments at 7. AT&T also suggests that the Commission "should require PRTC to describe how it intends to comply with the *Allocation Order*'s procedures" since some end offices will not be converted to equal access for eleven weeks after the conclusion of the equal access balloting process. AT&T Comments at 9 note **.

AT&T also states that it did not request, on behalf of the IXCs, that PRTC delay announcing equal access, but rather that PRTC's IXC Guide be available 60 days before the announcement to permit carriers to prepare for balloting. *Id.* at 6 note *.

[12] *Id.* at 9.

[13] PR Tele-Com Comments at 2.

[14] PR Tele-Com claims that non-published numbers represent "almost one-fourth of the Island's telephone accounts." PR Tele-Com Comments, revised, at 5, May 18, 1990.

[15] PR Tele-Com Comments, revised, at 5, May 18, 1990. TLD is a carrier owned by the Commonwealth of Puerto Rico authorized to provide off-island service. DISCORP was "a sister subsidiary of PRTC engaged in consulting services and other activities . . . . [until] August 14, 1989, [when] DISCORP was reorganized." PRTC Reply Comments at Attachment, Statement of Ramon Arce.

[16] "The latest date" rule, as described by PR Tele-Com, recognizes the customer's last-dated carrier choice as the selected IXC, regardless of the vehicle (telephone call to local exchange carrier (LEC), walk-in to business office, letter of agency, mail in ballot) used to select the carrier. PR Tele-Com Comments at 6.

[17] "Vehicle priority scheme," as described by PR Tele-Com, refers to PRTC's hierarchy or priority system for resolving conflicts regarding a customer's IXC selection *i.e.*, in order of priority: personal request ballot, mail-in ballot, letter of agency, and allocation. *Id. citing* PRTC's IXC Guide at IV.11.

[18] In earlier versions of PRTC's IXC Guide, PRTC proposed to adopt a "priority one ballot" that, once personally submitted to a PRTC business office, could not be changed without the customer again visiting the business office. PRTC subsequently revised its procedures to allow customers to receive a "personal request ballot" (instead of a "priority one ballot") which could be changed by calling, writing, or visiting a PRTC business office and receiving another personal request ballot. *See* PRTC IXC Guide at IV.11 (January 30, 1990 and revised March 28, 1990). *See also* Puerto Rico Telephone Company Equal Access Balloting Procedures, AT&T Petition for Declaratory Ruling, March 13, 1990 (AT&T Petition proceeding).

[19] PR Tele-Com Comments at 8.

[20] PRTC Reply Comments at 3.

[21] *Id.*

[22] *Id.* at 4.

[23] PRTC Reply Comments at 5 note 5 *citing Investigation of Access and Divestiture Tariffs*, 101 FCC 2d 911 (1985) (*Allocation Order), recon.*, 102 FCC 2d 503 (1985) (*Allocation Reconsideration Order)*; and PRTC Opposition to Petition for Declaratory Ruling, March 30, 1990, AT&T Petition proceeding.

[24] *PRTC Waiver Order*, 5 FCC Rcd at 121, para 25. Moreover, PRTC stated that it would not convert any end office to equal access "less than 180 days after the availability of equal access has been announced." *Id.*

[25] PRTC Request for Extension of Time at Exhibit 1. The Commission originally recommended that PRTC follow a phased implementation of end offices rather than flash cut conversion because, *inter alia*, a flash cut conversion "eliminates the opportunity to 'de-bug' the balloting and conversion process as the first offices are converted." The Commission suggested that PRTC reevaluate its plan to implement a simultaneous equal access conversion because of the Commission's concerns about "excessive errors" that could occur if PRTC implemented equal access simultaneously. *Puerto Rico Order* at 6607, para. 41.

[26] PRTC Reply Comments at 3.

[27] AT&T also requests that we require PRTC to explain how it will comply with the *Allocation Order* since some end offices will not be converted for several weeks after balloting concludes. In the *PRTC Waiver Order*, we granted PRTC a waiver of the presubscription balloting requirements "to the extent necessary to permit use of the timeline PRTC proposed." PRTC has proposed to change only the final date of conversion in its original timetable. We do not find that this change requires any additional waivers of the presubscription balloting requirements. PRTC is required to comply with existing Commission requirements for presubscription balloting in all other respects, and additional waivers may be necessary if PRTC makes further revisions to its timetable. *See PRTC Waiver Order*, 5 FCC Rcd at 121, para. 29.

[28] For instance, the Commission has found that nonpublished telephone numbers should receive special protection against nonconsensual disclosure in the context of Open Network Architecture. The Commission there found that an "unlisted telephone number reflects a customer's general decision to restrict the availability of its telephone number," and prohibited the BOCs from making unpublished and unlisted telephone numbers available to their enhanced services personnel. *BOC ONA Order*, 4 FCC Rcd at 217, para. 415. Nothing in *California v. FCC*, No. 87-7230 (9th Cir. June 6, 1990), appears to affect this decision. *See* Computer III Remand Proceedings, CC Docket No. 90-368, Notice of Proposed Rule Making (released Aug. 6, 1990).

[29] PR Tele-Com alleges that PRTC has provided a list of nonpublished numbers to TLD and DISCORP. PR Tele-Com Comments at 5. PRTC denies this allegation and notes that PR Tele-com has not provided any specific evidence that its allegations are true. PRTC Reply Comments at 4 note 3. We agree that PR Tele-Com has provided no proof of its allegation. However, we caution PRTC that nonpublished and unlisted number information should not be made available to any of its affiliates, nor provided to other off-island carriers, without a customer's prior authorization. *See BOC ONA Order*, 4 FCC Rcd at 217, para. 415.

[30] 101 FCC 2d at 931, Appendix B, para. 23.

[31] For example, the *Allocation Waiver Order* granted NYNEX a waiver to enable NYNEX to resolve conflicts in a manner similar to that which PR Tele-Com requests that we impose on PRTC, *i.e.*, to give all presubscription orders an equal weight and resolve "conflicts on the basis of the authorization date: the order with the later date prevails." 101 FCC 2d at 941, para. 18.

[32] 102 FCC Rcd at 508, para. 11.

[33] *Id.*

[34] *Id.* at 514, para. 20.

[35] *Id.* The *Allocation Reconsideration Order* granted petitions for clarification by Ameritech Operating Companies, BellSouth Corporation, and Southwestern Bell Telephone Company requesting approval for continued use of their conflict resolution procedures that gave ballot priority in the event of conflict. *Id.* That Order also reaffirmed the Commission's priority ballot conflict resolution procedures, concluding that "[b]allot priority is designed to protect, rather than to limit, customer choice during a period of vigorous marketing activity by the interexchange carrier industry." 102 FCC 2d at 513. The Commission also concluded that "end users are not 'locked into' the choice indicated on the ballot," and that IXCs are "free to . . . inform end users that they may change any previous selection by calling or writing the LEC business office." *Id.* at 513-514, para. 20. Consonant with these procedures, according to PRTC, customers in Puerto Rico receive "personal request ballots" if the customers write, call, or visit a PRTC business office because

the customers have lost their mail ballot, did not receive a mail ballot, or want to change an IXC selection. PRTC's IXC Guide at IV.11, revised (March 28, 1990).

[36] 102 FCC 2d at 513 note 24.

[37] *See* Letter from Thomas W. Ramsey, AT&T, to Donna R. Searcy, Secretary, FCC, August 9, 1990.

[38] *See* letter from Paul Berman, Attorney, PRTC to Donna Searcy, Secretary, FCC, August 13, 1990 (*PRTC August 13 letter);* letter from Paul Berman to Rose Crellin, FCC, September 10, 1990 (*PRTC September 10 letter)* ; and Letter from Paul Berman to Richard M. Firestone, FCC, September 18, 1990 (*PRTC September 18 letter).* PR Tele-Com argues that PRTC should be directed to honor all personal request ballots received from PR Tele-Com, and required to provide copies of the personal request ballots to other carriers in quantity. Letter form Gertrude J. White and Robert J. Aamoth, Attorneys, PR Tele-Com to Richard M. Firestone, FCC, September 5, 1990 (*PR Tele-Com September 5 letter).* PRTC responds that it has reballoted subscribers, and established new procedures. *PRTC September 18 letter.*

[39] *See PRTC August 13 letter, PRTC September 10 letter,* and *PRTC September 18 letter.*

[40] *See* Letter from Robert J. Aamoth, Attorney, PR Tele-Com to James D. Schlichting, FCC, August 13, 1990 (alleging PRTC improperly rejected carrier letters of agency (LOAs) in which multiline customers selected different off-island carriers for the various lines); *PR Tele-Com September 5 letter* at Exhibit 1; Letter from Robert B. Stechert and Mary E. Deal, AT&T, and Gertrude J. White and Robert J. Aamoth, Attorneys, PR Tele-Com to Richard M. Firestone, FCC, August 21, 1990; Letter from Charles H. Helein, and Laura Montgomery, Attorneys, Call U.S., Inc. to Richard M. Firestone, FCC, August 30, 1990; Letter from Donald F. Evans, MCI Communications Corporation to Richard M. Firestone, FCC, September 11, 1990. PRTC has responded in detail to these various allegations, including some clarifications and modifications of procedures. These allegations remain under review by Commission staff to determine whether any further remedial action is necessary or appropriate.

[41] The Commission has held that unreasonable and discriminatory practices in the implementation of equal access violate Sections 201(b) and 202(a) of the Communications Act. *Allocation Order,* 101 FCC 2d at 920 & note 32.

[42] *See* 47 U.S.C. § 208.

[43] This action is taken pursuant to delegated authority provided in Sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 and 0.291 (1988). This Order is effective on adoption.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

Ernest Enax, Jr.	File No. 50272-CM-P-88
and	
George W. Bott	File No. 50135-CM-P-87

For Construction Authorizations
In the Multipoint Distribution
Service at Albany, New York

MEMORANDUM OPINION AND ORDER

Adopted: September 26, 1990; Released: October 9, 1990

By the Chief, Common Carrier Bureau:

1. Before the Bureau are two petitions for reconsideration of actions taken by the Chief, Domestic Radio Branch, Domestic Facilities Division, Common Carrier Bureau ("Branch Chief") on February 21, 1989 and February 24, 1989, whereby the above-captioned application of Ernest Enax, Jr. ("Enax") was returned as "unacceptable for filing" and the above-captioned application of George W. Bott ("Bott") was granted. Also before the Bureau is a request for stay of the grant of the Bott application. Both petitions for reconsideration and the request for stay were filed by Enax.

BACKGROUND

2. On May 25, 1988, the Commission issued a public notice announcing the acceptance for filing of an application to construct and operate a Multipoint Distribution Service ("MDS") channel 2 station at Albany, New York that had been filed by Bott. Pursuant to Section 21.31(b) of the Commission's Rules, 47 C.F.R. § 21.31(b), any person desiring to file a competing application for a channel 2 facility in the Albany area was required to do so on or before July 25, 1988.

3. On July 25, 1988, Enax tendered a competing application for Albany, New York. Accompanying Enax's application was a request for waiver of Section 21.901(c) of the Rules, 47 C.F.R. § 21.901(c), which requires that the transmitting antenna of the proposed channel 2 facility be located within 10 miles of specified geographic coordinates of the Albany-Schenectady-Troy, N.Y. area (Lat. 42^0 39' 00" N., Long. 73^0 45' 24" W.). This application was placed on public notice on August 31, 1988. Enax's application was subsequently contested by Eastern Microwave, Inc. ("EMI"), by informal objection filed October 31, 1988, alleging harmful interference to EMI's MDS channel 1 facility at Albany, New York and its point-to-point microwave radio facilities at Mt. Greylock and Pittsfield, Massachusetts from Enax's proposed channel 2 facility. By letter dated November 29, 1988, Enax was advised by the Domestic Radio Branch staff that further examination of his application disclosed a deficiency in that the required Section 21.902(c)(4) interference analysis was incomplete. In addition, Enax was advised that his request for waiver of Section 21.901(c) was not sufficiently justified. Enax was permitted to submit curative amendments no later than January 17, 1989 and advised that failure to do so timely would result in the dismissal of his application. In the interim, on December 29, 1988, Bott protested Enax's application, alleging, with supporting documentation, that Enax did not act diligently in his attempt to secure a tower site within the 10 mile zone specified in Section 21.901(c).

4. On January 17, 1989, Enax filed an amendment to his application in response to the issues raised by EMI and Bott in their objections and to the staff's request to cure the noted deficiencies. The amendment specified a new transmitter site for Enax's proposed station. The geographic coordinates of the station's transmitting antenna were changed by fourteen minutes and forty-one seconds of latitude and one minute and forty-six seconds of longitude. On February 21, 1989, the Branch Chief dismissed Enax's application on the grounds that the application, as amended, was "cut-off" from further consideration because the amendment constituted a substantial modification or "major amendment" under Section 21.23(c)(1)(V) of the Rules in that the changes in geographic coordinates were more than ten seconds. The Branch Chief found that the Section 21.31(e)(2) exception for major amendments that resolve frequency conflicts did not apply because the application was defective *ab initio* due to Enax's failure to justify the original waiver request. Consequently, the Enax application was returned as unacceptable for filing.

5. On February 22 and 23, 1989, Bott filed submissions in response to staff requests for clarifying information related to site availability and a request for waiver of the 10 mile rule. On February 24, the channel 2 application of George Bott was granted. Enax has petitioned the Bureau to rescind the Branch Chief's actions and reinstate his application. Bott has filed oppositions to Enax's requests.

ARGUMENTS

6. Enax submits that the dismissal of his application by the Branch Chief was unwarranted. He contends that although his amendment did result in a substantial modification of his application, the amendment was, nevertheless, exempt from the cut-off provisions of Section 21.31 because the amendment "resolves frequency conflicts . . . [but] does not create new or additional frequency conflicts." 47 C.F.R. § 21.31(e)(2). Enax says that selecting the new transmitter site not only removed the need for waiver of the 10 mile limit requirement, but, more importantly, also resolved the potential for interference alleged by EMI. On this basis, he claims that his application should be reinstated to the *status quo ante* and considered as a competing application with Bott's.

7. Enax argues further that the Branch Chief also erred in granting Bott's application. Enax notes that on February 22 and 23, 1989, counsel for Bott filed amendments to Bott's application, neither of which was signed by Bott, as required by Section 21.23(g) of the Rules, nor were they served on Enax, as required by Section 21.23(e) of the Rules. According to Enax, failure to comply with the signature and service requirements of Sections 21.23(g) and 21.23(e) rendered Bott's application defective and

therefore, ungrantable. Enax concludes that the grant of Bott's application should be rescinded and the application returned to its former place in the processing line.

8. Bott disputes all of Enax's contentions. Generally, Bott argues that Enax's amendment was merely an attempt to sidestep addressing the deficiencies in his application and the serious questions raised by Bott concerning the sufficiency of Enax's waiver request. Specifically, Bott contends that Enax's amendment does not meet the express requirements of Section 21.31(e)(2) because Enax has refused to concede any interference potential to EMI, and because Section 21.31(e)(2) only applies to frequency conflicts requiring resolution by hearing, comparative evaluation or random selection, *i.e.,* those applications that have been determined to be mutually exclusive. Therefore, says Bott, even if Enax's application could be deemed to resolve a frequency conflict between EMI and Enax, Enax still would not be exempt from the cut-off provisions, since EMI is the licensee of the MDS channel 1 frequencies in Albany, not a competing applicant for the MDS channel 2 frequencies. Finally, regarding the alleged defects in Bott's application, Bott argues that the two filings submitted on his behalf were merely responses to a staff inquiry, not formal amendments, and as such they were not required to be personally signed by Bott. Nevertheless, in order to remove any uncertainty as to their accuracy, Bott now attests that they were submitted with his knowledge and pursuant to his authorization. Bott also notes that the two submissions were tendered after Enax's application had been dismissed, thereby obviating the requirement to serve Enax with either filing.

DISCUSSION

9. *Enax's application.* The dispositive facts in this proceeding are undisputed. First, the application Enax filed on July 25, 1988, unless properly amended, was fatally defective. Second, the amendment filed on January 17, 1989, resulted in a substantial modification of the July 25th application, rendering the application "cut-off" from further consideration, unless specifically exempted by Section 21.31(c) of the Rules. The primary issue to be resolved is whether the Branch Chief erred in finding that Enax's amendment rendered his application newly-filed and therefore cut-off from further consideration. The Bureau finds that the Branch Chief's conclusion that Enax's application, as amended, was "cut-off" from further consideration is correct.

10. Section 21.31(e) provides, in part:

> For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by § 21.23), except under any of the following circumstances:... (2) The amendment resolves frequency conflicts with authorized stations or other pending applications which would otherwise require resolution by hearing, by comparative evaluation . . . or by random selection . . . provided that the amendment does not create a new or additional frequency conflicts.

11. The Branch Chief concluded correctly that Enax's amendment did not fall within this exception. As between Enax and EMI the frequency conflicts "would [not] otherwise require resolution by hearing, by comparative evalution . . . or by random selection . . . ." The periods for filing competing applications for the frequencies assigned to each of the licensed EMI facilities had long since passed when Enax tendered his amendment. Because Enax had met none of the filing deadlines, his application, vis-a-vis all of the EMI facilities, was not acceptable for filing, and thus was beyond the scope of Section 21.31(e)(2), notwithstanding his professed resolution of any frequency conflict. *See Domestic Public Land Mobile Radio Service* (Doc. No. 19905), 60 FCC 2d 549, 552, and 560 (1976). Consequently, Enax's amended application was "newly filed" and, because it was not exempted, the amended application was cut-off from comparative consideration with the Bott application, pursuant to Section 21.31(b)(2)(i). The Branch Chief therefore properly returned the amended application to Enax. *See, e.g., Microband Corporation of America,* 41 FCC 2d 184 (1973).

12. *Bott's application.* It seems that Bott has misconstrued the Commission's application requirements regarding signatures. Section 1.743(b) of the Rules expressly states that all "applications, amendments, and *related statements of fact required by the Commission* " be personally signed by the applicant (emphasis added). Hence, Bott was obligated to sign the February 22 and 23, 1989 letters that were submitted on his behalf in response to a request from the staff for clarifying information. However, despite the fact that Bott failed to comply fully with the Commission's verification requirements, we have been presented no evidence of willful conduct indicating that he intended to evade the purpose of the Commission's Rules. Moreover, Bott later submitted an ameliorative amendment, a "Declaration" signed April 9, 1989, averring to the accuracy of the February 22 and 23, 1989 letters. Under these circumstances, we concur with the Branch Chief's finding that Bott's February 22 and 23 responses are entitled to *nunc pro tunc* consideration. *See Communications Gaithersburg, Inc.,* 60 FCC 2d 537 (1976) and *Jane A. Roberts,* 29 FCC 141 (1960). *See also B.J. Hart,* 44 FCC 2088 (1960) and *Albert L. Crain,* 28 FCC 2d 381 (1971). Furthermore, we agree with the conclusion that because the letters were tendered after Enax's application had been returned, Bott was under no obligation to serve Enax with copies of the February 22 and 23, 1989 letters. *See* 47 C.F.R. § 21.23(e).

13. *Request for Stay.* In light of the foregoing discussion, Enax's request for stay is dismissed as moot.

14. Accordingly, IT IS ORDERED that the petitions for reconsideration filed by Ernest Enax, Jr. ARE DENIED and that the request for stay filed by Enax IS DISMISSED. IT IS FURTHER ORDERED that the Branch Chief's actions ARE AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-310

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Tennille, Georgia)	RM-7190

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1990; Released: October 11, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Michael K. Garner (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 3772 (1990), proposing the allotment of Channel 260A to Tennille, Georgia, as that community's first local broadcast service. Petitioner filed comments restating his intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by alloting Channel 260A to Tennille, Georgia, as that community's first local broadcast service. Channel 260A can be allotted to Tennille in compliance with the minimum distance separation requirements of the Commission's Rules without a site restriction.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Tennille, Georgia	260A

4. The window period for filing applications will open on **November 27, 1990,** and close on **December 27, 1990.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 260A at Tennille are North Latitude 32-56-24 and West Longitude 82-48-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-523

In the Matter of

Amendment of Section 73.202(b), RM-6929
Table of Allotments,
FM Broadcast Stations.
(Royston, Georgia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1990; Released: October 11, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Oculus Broadcasting Corporation ("Oculus"), licensee of Station WBIC (now Station WPUP),[1] Channel 279A, Royston, Georgia, the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 8200 (1989), requesting the substitution of Channel 279C3 for Channel 279A at Royston, Georgia, and modification of its license to specify the higher class channel. Athena Broadcasting Corporation, Inc. ("Athena"), successor-in-interest to Oculus, filed comments stating its intention to apply for Channel 279C3, if allotted.[2]

2. We believe the public interest would be served by the substitution of Channel 279C3 for Channel 279A at Royston, Georgia, since it would provide a wide coverage area FM service to the community. The substitution can be made in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.2 kilometers (6.3 miles) northwest. [3] The site restriction is necessary in order to avoid a short-spacing to the licensed site of Station WLWZ(FM), Channel 280A, Easley, South Carolina. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station WPUP(FM) to specify operation on Channel 279C3 in lieu of Channel 279A at Royston, Georgia.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Royston, Georgia	279C3

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WPUP(FM), Royston, Georgia, IS MODIFIED, to specify operation on Channel 279C3 in lieu of Channel 279A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Station WBIC changed its call sign to Station WPUP on March 2, 1990.

[2] Voyager Communications III, Inc. ("Voyager"), licensee of Station WLWZ, Channel 280A, Easley, South Carolina, filed comments. Athena filed a letter opposing Voyager's comments for lack of a certificate of service. Although timely filed, Voyager's comments did not contain a certificate of service indicating that a copy was served on the petitioner. Therefore, Voyager's comments have not been accepted. *See* Section 1.420(c) of the Commission's Rules and the Appendix to the *Notice of Proposed Rule Making* in this proceeding.

[3] The coordinates for Channel 279C3 at Royston are North Latitude 34-19-59 and West Longitude 83-12-17. Since this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-491

In the Matter of

Amendment of Section 73.202(b), RM-6945
Table of Allotments,
FM Broadcast Stations.
(Brantley, Alabama)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 24, 1990; Released: October 11, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 4 FCC Rcd 8082 (1989), issued in response to a petition filed on behalf of Crenshaw Broadcasting Company (petitioner), proposing the allotment of Channel 262A to Brantley, Alabama, as that community's second local FM broadcast service.[1] Petitioner filed supporting comments in response to the *Notice*. No other comments were received.

2. We believe the public interest would be served by allotting Channel 262A to Brantley, since it could provide a second local broadcast service to the community.

3. As indicated in the *Notice*, Channel 262A can be allotted to Brantley consistent with the minimum distance separation requirements of the Commission's Rules, provided the transmitter is located at least 4.0 kilometers (2.5 miles) northwest of the community[2] to avoid short-spacing to Channel 263A at Fort Rucker, Alabama. [3]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Brantley, Alabama	262A, 282A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications on Channel 262A at Brantley, Alabama, will open on **November 27, 1990,** and close on **December 27, 1990.** [4]

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Pending before the Commission is a proposal by Brantley Broadcast Associates, permittee of Station WDHT-FM, Channel 282A, Brantley, Alabama, (BPH-880224MR) seeking to change its community of license from Brantley to Luverne, Alabama, and to modify its facilities to specify operation on Channel 282C1. *See* MM Docket No. 88-593.

[2] Coordinates used for Channel 262A at Brantley are 31-36-00 and 86-17-44.

[3] Coordinates used for Channel 263A at Fort Rucker, Alabama, are 31-21-55 and 85-40-49.

[4] Because the petition for rule making in this proceeding was filed prior to October 2, 1989, applicants for Channel 262A at Brantley may avail themselves of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-612

In the Matter of

Amendment of Section 73.202(b), RM-7103
Table of Allotments,
FM Broadcast Stations.
(Key Colony Beach, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 24, 1990; Released: October 11, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 155 (1990), issued in response to a petition for rule making filed by Richard L. Silva, permittee of Station WKKB, Channel 288A, Key Colony Beach, Florida, proposing the substitution of Channel 288C2 for Channel 288A at Key Colony Beach, Florida, and modification of his construction permit for Station WKKB to specify the higher class channel. Petitioner filed supporting comments restating his intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 288C2 for Channel 288A at Key Colony Beach, in order to provide a first wide coverage area FM service to the community. Channel 288C2 can be allotted to Key Colony Beach in compliance with the minimum distance separation requirements of the Commission's rules, with a site restriction of 16.1 kilometers (10.0 miles) west of the community.[1] Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we are herein modifying the construction permit of Station WKKB(FM) to specify operation on Channel 288C2 in lieu of Channel 288A at Key Colony Beach, Florida.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Key Colony Beach, Florida	288C2

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station WKKB(FM), Key Colony Beach, Florida, IS MODIFIED, to specify operation on Channel 288C2 in lieu of Channel 288A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 288C2 at Key Colony Beach are North Latitude 24-42-28 and West Longitude 81-06-13. Because this petition was filed prior to October 2, 1989, the petitioner may avail himself of the provisions of Section 73.213(c)(i) of the Commission's rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-438

In the Matter of

Amendment of Section 73.202(b), RM-7441
Table of Allotments,
FM Broadcast Stations.
(Dock Junction, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 24, 1990; Released: October 11, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Lorraine M. Wiggins (petitioner), permittee of Channel 290A at Dock Junction, Georgia. Petitioner requests the substitution of Channel 290C3 for Channel 290A at Dock Junction, and modification of her construction permit (BPH-870910MJ) to specify operation on the higher class channel.

2. We believe the public interest would be served by proposing the substitution of Channel 290C3 for Channel 290A at Dock Junction, Georgia, since this could provide the community with a wide coverage area FM station. Channel 290C3 can be allotted to Dock Junction in compliance with the Commission's minimum distance separation requirements provided that there is a site restriction of 2.5 kilometers (1.6 miles) east of the community.[1] The site restriction is necessary to avoid a short-spacing to a proposal to substitute Channel 290C3 for Channel 290A at Lakeland, Georgia.[2]

3. As requested, we shall propose to modify petitioner's construction permit to specify operation on Channel 290C3. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest for use of Channel 290C3 at Dock Junction or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested persons.

4. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Dock Junction, Georgia	290A	290C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 3, 1990,** and reply comments on or before **December 18, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Vincent A. Pepper
Ellen S. Mandell
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(Attorneys for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates are North Latitude 31-11-30 and West Longitude 81-28-50.

[2] *See* MM Docket No. 90-214, 5 FCC Rcd 2685 (1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-414

In the Matter of

Amendment of Section 73.202(b), RM-6923
Table of Allotments,
FM Broadcast Stations.
(Indianola, Mississippi)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 24, 1990; Released: October 11, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 7061 (1989), issued in response to a petition filed by Walter Gray Gilbert (petitioner), proposing the substitution of FM Channel 245C3 for Channel 245A at Indianola, Mississippi. Petitioner also requested modification of his construction permit for Channel 245A to specify operation on Channel 245C3. Petitioner filed supporting comments in which he reaffirmed his interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 245C3 for Channel 245A at Indianola, Mississippi, since it could provide the community with its first wide coverage area FM station. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at a site 8.6 kilometers (5.3 miles) northwest of the community.[1] The site restriction will prevent a conflict with the recent substitution of Channel 244C3 for 243A at Oak Grove, Louisiana, and the modification of the license for Station KWCL(FM) to specify operation on the higher powered channel. In addition, we are authorizing a modification of the petitioner's construction permit for Channel 245A, Indianola, Mississippi, to specify operation on Channel 245C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Indianola, Mississippi	245C3, 288A

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Channel 245A, Indianola, Mississippi, IS MODIFIED to specify operation on Channel 245C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 245C3 are 33-31-41 and 90-39-15. Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the permittee may avail himself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

CARIBBEAN	CSR-3414
COMMUNICATIONS	VI0001
CORPORATION	VI0005

St. Thomas, Virgin Islands
St. John, Virgin Islands

Petition for Declaratory Ruling

MEMORANDUM OPINION AND ORDER

Adopted: October 1, 1990; Released: October 11, 1990

By the Chief, Video Services Division:

1. On June 26, 1990, Caribbean Communications Corporation d/b/a St. Thomas - St. John Cable TV (herein "CCC") filed a "Petition for Declaratory Ruling" concerning the applicability of the Commission's preemption of local subscriber rate regulation, §76.33(a)(4) of the Commission's Rules, to the operation of its cable television system on St. Thomas and on St. John in the U.S. Virgin Islands.[1] The Virgin Islands Public Services Commission (herein "PSC") filed its answer to this petition on July 9, 1990, and CCC replied to it on July 17, 1990.

2. The following facts are uncontested in this proceeding. Prior to September 17, 1989, the following three English language television broadcast stations placed Grade B or better contours over both St. Thomas and St. John: WSVI (ABC, Channel 8), Christiansted, VI; WBNB-TV (CBS, Channel 10), and WTJX-TV (Educ., Channel 12), both Charlotte Amalie, VI.[2] However, as a result of Hurricane Hugo, which made landfall on Sunday, September 17, 1989, Station WBNB-TV was forced to discontinue its broadcast operations and it has not yet resumed them. [3] Meanwhile, a proposed rate increase of $3.00, which CCC had announced on August 15, 1989, and which would have taken effect on October 1, 1989, could not be implemented due to the extensive damage Hurrican Hugo also caused the cable television system. However, on June 20, 1990, CCC did increase its rates for basic cable service more than five percent beyond the rate in effect since October 1, 1987.

3. According to CCC, after WBNB-TV discontinued operations on September 17, 1989, only two stations placed Grade B or better contours over St. John and St. Thomas. CCC notes that §76.33(a)(4) of the Rules contains the following provision:

> A cable system once determined to be subject to effective competition after the effective date of this section, shall not be subject to regulation for one year after any change in market conditions which would cause it to be determined not to be subject to effective competition.

Therefore, CCC claims that the PSC is precluded from regulating the cable system's rates for basic service before September 17, 1990. Finally, CCC notes that the reason it had not petitioned the FCC for a determination as to whether or not it was subject to effective competition prior to September 17, 1989, was that all parties were then in agreement on that issue. In fact, a statement recognizing that the PSC was precluded from regulating CCC's rates had been issued by the Director of the PSC on June 25, 1987, which was supported by an opinion of its Counsel dated June 23, 1987.

4. In response, the PSC notes that the effective date of the present version of §76.33 of the Rules was October 29, 1988,[4] and that it rendered no decision concerning the existence of effective competition in St. Thomas or in St. John after that date or, in fact, ". . . at any time relevant to this dispute." Moreover, the PSC notes that a statement by its Executive Director is not the same thing as a determination by the Virgin Islands Public Services Commission. In any event, according to the PSC, the ruling clearly contemplated by §76.33(a)(4) was one rendered by the FCC on the subject subsequent to the Section's effective date, October 29, 1988, and no such determination was ever made or even requested. Therefore, the PSC states that the CCC's June 1990 rate increase should be subject to regulation by the PSC.

5. In response, CCC notes that it previously had raised its rates for basic cable service by more than five percent on October 1, 1987, in reliance upon the June 23, 1987, opinion of counsel for the PSC. Furthermore, the PSC took no adverse action to this increase, which CCC had previously announced on August 14, 1987. According to CCC, the fact that the PSC did not hold evidentary hearings on the number of broadcast signals available in St. Thomas or in St. John's, and that the June 23, 1987 opinion of Counsel stating that ". . . the Public Services Commission no longer regulates cable tv rates" was not explicitly premised upon the presence of effective competition should not enable the PSC to ". . . disclaim its own ruling two years later after the cable system has increased its rates."

6. According to §76.33(a)(4) of the Rules, any cable system that has not been subject to rate regulation because of the existence of effective competition, will remain unregulated by local authorities for one year after any event changing market conditions to the extent that the system is no longer subject to effective competition. The instant case presents the exact circumstance that the one-year provision in §76.33(a)(4) was designed to address. As a result of a hurricane, market conditions changed in that one of the three stations that had previously placed predicted Grade B contours over the affected cable system was damaged so extensively that the station ceased broadcasting. The crux of PSC's argument is that the one-year provision contained in §76.33(a)(4) requires as a prerequisite the issuance of a Commission "determination" of effective competition. However, contrary to PSC's contention, the existence of effective competition need not be established solely by a Commission determination; the presence of effective competition may be determined by applying the existing, undisputed factual pattern to the relevant market. In this case, it is undisputed that, prior to Hurricane Hugo, three stations placed predicted Grade B contours over St. Thomas and St. John. Therefore, no Commission determination need to have been sought to establish that the cable system serving these areas was

subject to effective competition. Applying the one-year provision of §76.33(a)(4), the subject cable system remained unregulated for as long as one year from the date Station WBNB-TV ceased broadcasting. Therefore, we find that the rate increase which CCC initially announced on August 15, 1989, and which it sought most recently to effectuate on June 20, 1990, was not and is not subject to the regulatory authority of the PSC, pursuant to §76.33 of the Commission's Rules.

7. In view of the foregoing, we find pursuant to §0.283 of the Commission's Rules, that partial grant of CCC's petition for declaratory ruling is in the public interest.

8. Accordingly, IT IS ORDERED, That the "Petition For Declaratory Ruling" (CSR-3414), filed June 26, 1990, by Caribbean Communications Corporation d/b/a St. Thomas - St. John Cable TV IS GRANTED to the extent indicated in paragraph 6, *supra*.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

FOOTNOTES

[1] The parties agree for the purposes of this proceeding to consider these facilities to constitute one cable television system.

[2] Station WSVI is also licensed to operate Television Broadcast Translator Station W05AS, serving Charolotte Amalie, and Station WTJX-TV is also licensed to operate Television Broadcast Translator Station W05AW, serving various rural areas.

[3] On November 8, 1989, WBNB-TV was granted Special Temporary Authority to remain dark until April 16, 1990, this was later extended until October 16, 1990, due to delays in restoring electric power and settling issurance claims after the storm.

[4] However, the effective date of the Commission's initial version of §76.33 of the Rules was December 29, 1986, for existing cable systems, or December 29, 1984 for any cable system franchised after that date.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

KYLES BROADCASTING, LTD.
(Assignor)

File No. BAPCT-891107KK

and

FLINN BROADCASTING CORPORATION
(Assignee)

For Assignment of Construction Permit
for Channel 50, Memphis, Tennessee

MEMORANDUM OPINION AND ORDER

Adopted: August 27, 1990; Released: October 11, 1990

By the Commission:

1. The Commission has before it for consideration: (1) the above-captioned application for consent to the assignment of the construction permit for Channel 50, Memphis, Tennessee,[1] from Kyles Broadcasting, Ltd. (Kyles) to Flinn Broadcasting Corporation (Flinn); (2) petitions to deny the assignment application filed by West Tennessee Broadcasting Corporation (West Tennessee), licensee of station WLMT(TV), channel 30 (IND/FOX), Memphis, Tennessee, and Channel 24 Licensee Corp. (Channel 24), licensee of station WPTY-TV, channel 24 (IND), Memphis, Tennessee; and (3) related pleadings. Flinn is the licensee of station WHBQ(AM), Memphis, Tennessee. In view of the proposed common ownership of radio and television stations in Memphis, which is generally prohibited by Section 73.3555(b)(1) of the Commission's Rules, Flinn has requested a waiver of the one-to-a-market rule.

PROCEDURAL MATTERS

2. The pleadings raise two procedural questions: namely, whether Channel 24's petition was timely filed and whether Kyles has a construction permit to assign. In regard to the first question, the applicants claim that Channel 24's petition should be returned without consideration because it was not timely filed in accordance with Section 73.3584 of the Commission's Rules; that is, within thirty (30) days of acceptance of the application. Channel 24, on the other hand, argues that its petition, which was filed nearly four months after the application's acceptance, is timely because the assignment application was not complete when filed. It asserts that the applicants even conceded that the deficiencies in their original submission must be taken into account in determining the due dates for pleadings by opposing parties. We find Channel 24's arguments unavailing. The application was substantially complete when filed, and was accepted for filing on November 22, 1989. Petitions to deny were due, in accord with Rule 73.3584, on or before December 26, 1989. West Tennessee filed its petition timely; Channel 24 did not. The fact that the assignment application contained certain deficiencies, which rendered the application initially ungrantable, but which were cured subsequently by minor amendments, does not afford Channel 24 good cause for filing its petition to deny untimely. *See John F. Runner*, 36 RR2d 773 (1976); and *Midwestern Broadcasting Co., Inc.*, 15 FCC2d 720 (1968). Further, no support for Channel 24's late filing is provided by the applicants' recognition of this failure to set forth initially all necessary information and documentation and their willingness to interpose no objection to West Tennessee's subsequent response to any curative amendment. Accordingly, Channel 24's late-filed petition to deny will be dismissed. Nevertheless, in our discretion, we have treated the petition as an informal objection in accordance with Section 73.3587 of the Commission's Rules.

3. The second question concerns the status of Kyles' construction permit. We note that the construction permit for Channel 50 was granted by the Review Board on November 23, 1987, pursuant to an approved settlement among the competing applicants for that permit. It became effective on January 4, 1988. The construction permit was issued on April 30, 1990 and, by its terms, will not expire until April 30, 1992.[2] The issuance of the construction permit, which we view as a ministerial act, was delayed because the engineering staff of the Television Branch had to review certain technical amendments that had been filed during the course of the Channel 50 proceeding, to assure compliance with our Rules. Thus, at the time the assignment application was filed, Kyles had already been granted a construction permit. The validity of the construction permit is not affected by the fact that the mere ministerial act of actually issuing the permit had not occurred. Accordingly, we reject Channel 24's contention that the assignment was filed prematurely.

SUBSTANTIVE MATTERS

4. *Assignability of permit.* Channel 24 essentially contends that by filing the assignment application in advance of the actual receipt of the construction permit, Kyles has shown that it had no intent to construct the station. Citing *Calhoun County Broadcasting Co.*, 57 RR2d 641, 646 (1985); and *Scott & Davis Enterprises, Inc.*, 54 RR2d 868 (1983), Channel 24 urges the denial of the application. Additionally, Channel 24 argues that because Kyles has allegedly admitted that it is bereft of financial resources, it is in violation of the Commission's Rules by failing to inform the Commission of this fact prior to the filing of the assignment application.[3]

5. *Disposition.* Initially, we note that in challenging the assignment application, pursuant to Section 309(d) of the Communications Act of 1934, as amended, a petitioner must, as a threshold matter, submit specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest. *See Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). Once the pleading standard is satisfied, the Commission must determine whether the record as a whole (*i.e.*, the application, the pleadings, and other mat-

ters which may be officially noted) presents a substantial and material question of fact requiring a hearing. *See* Section 309(d)(2).

6. Since Kyles' construction permit has only recently been issued, there is no proscription to the assignment of the construction permit. A construction permit may generally be assigned at any time prior to the 12th month of the construction period, without any explanation by the permittee. *See* Section 73.3598 of the Rules. The cases cited by Channel 24 in support of the proposition that a construction permit will not be issued to a permittee who has agreed to sell it, are inapposite. In both of the cited cases, agreements to assign the construction permits were executed prior to grant of the permits. In this case, the permittee made its decision to sell after grant of the construction permit. Finally, we find that Kyles is not in violation of Section 1.65 of the Commission's Rules. While changes did occur in the primary source of financing (the 80% limited partner, who was to provide 80% of the funding for construction of the station, withdrew from the partnership), the applicant's statement that such changes took place after the Review Board's decision granting the application has not been challenged. Since Section 1.65 of the Commission's Rules applies only to "pending" applications, such change was not reportable. Moreover, changes in an applicant's sources of funds to be relied upon occur frequently and such intervening events do not detract from the initial determination of the applicant's ability to construct the proposed station. *See KRPL, Inc.*, FCC 90-116, released May 2, 1990. Accordingly, we find that Channel 24 has failed to allege any matters that warrant further action.

WAIVER

7. *Waiver of the One-to-a-Market Rule*. We now turn to the question of whether a sufficient showing has been made to warrant a waiver of the multiple ownership rules so as to permit common ownership of the new station on Channel 50, and WHBQ(AM), both Memphis, Tennessee. On February 23, 1989, the Commission released its *Second Report and Order* in MM Docket No. 87-7 (*Second Report and Order)*, 4 FCC Rcd 1741, *recon. denied in part and granted in part*, 4 FCC Rcd 6489 (1989), in which it retained the one-to-a-market rule, but adopted a revised waiver standard for cases satisfying certain criteria. Specifically, the Commission indicated that it would "look favorably upon waiver applications involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees or 'voices' after the proposed merger." *Id.* at 1741. The Commission also stated that it would look with similar favor on waiver requests involving "failed" broadcast stations; *e.g.*, a station that has not been operating for a substantial period of time or is involved in bankruptcy proceedings. Beyond these two circumstances, the *Second Report and Order* asserted that waiver applications would be considered on a case-by-case basis and evaluated using five public interest criteria: (1) the potential benefits of joint operation of the facilities; (2) the types of facilities involved (*e.g.*, VHF or UHF, AM or FM); (3) the number of media outlets already owned by the applicant in the relevant market; (4) any financial difficulties experienced by the stations involved; and (5) the nature of the market -- that is, the level of competition and diversity, based on both broadcast and other media voices, after the requested joint operation is implemented. These factors would be weighed to determine whether, in a given case, the potential benefits of combined facilities can be obtained without undermining the public interest in diversity and economic competition in communications markets. Because Memphis, Tennessee is the 41st ranked television ADI, and because neither WHBQ(AM) nor unbuilt Channel 50 qualifies as a failed station, Flinn's waiver request is subject to review under the case-by-case standard, pursuant to the five public interest criteria.

8. The applicants maintain that their showing meets these criteria and is consistent with Commission precedent, citing *Tulsa 23*, 5 FCC Rcd 727 (1990); *P-N-P Broadcasting, Inc.*, 4 FCC Rcd 5596 (1989); and *Great American Television and Radio Co., Inc.*, 4 FCC Rcd 6347 (1989). With regard to the first factor, public service benefits, Flinn states that the proposed common ownership of WHBQ(AM) and Channel 50 will result in significant economies of scale, operating efficiencies, and public interest benefits. Flinn points out that it plans to seek authority to relocate the Channel 50 transmitter site to the current WHBQ(AM) site. This, Flinn notes, will enable it to eliminate the costs it would incur in acquiring or leasing a separate site for Channel 50, and will also reduce site development costs. Additionally, it maintains, common ownership of WHBQ(AM) and Channel 50 will allow it to construct joint studio facilities which will result in significant future savings in operational costs.[4] Flinn estimates that it will save approximately $200,000 in construction costs for the joint studios, and more than $35,000 annually in studio rent. Additionally, Flinn maintains, the joint operation of the stations will allow it to achieve significant economies of scale with respect to administrative, promotion, program and production costs, and the sharing of personnel (including the general manager, and sales, accounting, traffic and engineering employees). It believes that these savings will exceed $240,000 annually.

9. Flinn contends that these savings are significant when viewed in terms of the anticipated potential revenue for Channel 50. When constructed, Flinn states, Channel 50 will be the third or fourth independent television station in the Memphis market and that the station's competitive position will be weak.[5] Flinn notes that of the two independent stations in the market, one averaged a 6.5 percent share of the Memphis ADI television audience from 9:00 a.m. to 12 midnight in 1988, and the other station averaged a 4 percent audience share. Because of the anticipated reluctance of many Memphis cable systems to carry the new station, Flinn states, it believes that Channel 50's audience shares will be below the other independent stations when it commences broadcast operations. The estimated 1989 net television revenues for the Memphis market, it asserts, was $69,300,000. Thus, Flinn maintains, if Channel 50 could achieve a 4 percent audience share, and a corresponding share of the market's advertising revenue, its net revenues would approximate $2,770,000. However, Flinn maintains that it does not expect the station to generate revenues of this magnitude initially. Flinn has estimated that the annual operating expenses for Channel 50 and WHBQ(AM), operating separately, would total $793,000, and that the estimated operating expenses for combined operation of the stations would total $551,500. Savings from joint operation of the stations, Flinn avers, would represent almost 10 percent of

the estimated revenues for Channel 50. These savings, it states, would be used to hire additional employees and to expand the stations' news, public affairs, and other nonentertainment programming. Further, Flinn claims, common ownership of the stations would enable a struggling radio station to continue to provide service to the public, and would activate an unused commercial allocation, thereby providing a new television broadcast service to the public. *See Second Report and Order*, 4 FCC Rcd at 1749.

10. With respect to the second criterion, the nature of the stations involved, Flinn notes, WHBQ(AM) is a directional, Class III regional AM station operating on 560 kHz with reduced power at night (5 kW-D, 1kW-N, DA-2). According to the Fall 1988 Arbitron ratings, it notes, WHBQ(AM) was the 13th ranked radio station in the Memphis market with a 1.4 share. Arbitron ratings for Spring 1989, Flinn asserts, showed that WHBQ(AM)'s share had declined to less than 1.2, and that it was no longer among the top 14 radio stations in the Memphis market. Therefore, it argues, WHBQ(AM) is not a dominant station in the Memphis radio market. Flinn avers that Channel 50 will be an independent UHF station, and that the construction permit authorizes operation from an antenna radiation center 800 feet above average terrain at 5,000 kW ERP visual. Therefore, Flinn states, the proposed joint operation of the two facilities poses no risk of creating any adverse effect on diversity or competition given the substantial number of competing stations in the Memphis market.

11. The third factor deals with the number of media outlets owned by the applicant in the particular market. Flinn now owns only WHBQ(AM).

12. Flinn asserts that the fourth criterion, concerning the financial difficulties of the station or stations in question, may not apply to its acquisition of Channel 50 since it is an unbuilt station. However, it contends, relevant facts demonstrate that both WHBQ(AM) and Kyles (the Channel 50 permittee) have experienced significant financial difficulties. In this regard, Flinn claims, since it acquired WHBQ(AM) and separated the station operation from WHBQ-TV, it has lost $768,000 on a cash basis, struggling to maintain the station's operations while also trying to provide service to the public. During this same period, it avers, WHBQ(AM)'s ratings and competitive position in the Memphis market have also declined. Flinn asserts that the joint operation of the two stations will allow it to provide an improved program service to Memphis, compared to the level of service that would result if the stations were to be operated as stand-alone stations (assuming that Channel 50 could be built as a stand-alone station). Additionally, Flinn states, Kyles has experienced financial difficulty in attempting to place Channel 50 on the air. In this regard, Kyles notes, shortly after it was granted the construction permit for Channel 50, its limited partner, who was the 80-percent owner, suffered severe financial losses and was unable to provide his share (80 percent) of funding for the station's construction and initial operation. Tri-State Bank of Memphis was to provide a loan for the remaining 20 percent of the construction costs, Kyles maintains, but the bank refused to lend the funds absent the equity financing from the limited partner. Kyles claims that it sought funds from other banking sources, but the banks were not interested; therefore, it sought new investors for the station through personal contacts, its communications counsel, and a media broker. After one year of seeking and contacting numerous potential investors, Kyles avers, it received only negative responses. These responses, Kyles states, reflect the broadcasting industry belief that operating Channel 50 as a third or fourth stand-alone independent station in Memphis is not economically viable. Kyles asserts that it has always been its goal and intent to construct the station and to provide the first minority-owned broadcast television service to the Memphis community. However, because of its inability to bring new investors into the partnership and other changed circumstances, Kyles states, it sought to assign the Channel 50 permit to a third party. Flinn, Kyles notes, was the only party that engaged in serious negotiations, and one of only two that expressed any interest in acquiring it. Thus, Kyles asserts, Flinn's acquisition of Channel 50 is the only means of activating the channel and providing a new television service to Memphis. Kyles notes that Flinn has incurred significant financial losses in operating WHBQ(AM) as a stand-alone AM station, and that it has encountered difficulties over a two-year period, while seeking to attract investors and/or third parties interested in acquiring the construction permit. Kyles contends that these factors are analogous to those financial difficulties which the Commission has found to justify one-to-a-market waivers, citing, *Holston Valley Broadcasting Corp.*, 5 FCC Rcd 507 (1990).

13. The fifth and final factor in our case-by-case review is concerned with the nature of the relevant market in light of our traditional diversity and competition concerns. This includes the number of broadcast outlets and separate "voices" that would exist if the merger were approved, the degree of cable penetration and the availability of other nonbroadcast media. As to television stations, we stated that we would consider the relevant ADI TV market and, as to radio, the relevant TV metro market. In this regard, Flinn points out the Memphis ADI TV market (ranked 41st with 586,500 households) is served by seven television stations having seven separate owners. They are: WHBQ-TV (ABC), channel 13; WMC-TV (NBC), channel 5; WREG-TV (CBS), channel 3; WPTY-TV (IND), channel 24; WLMT(TV) (IND/FOX), channel 30; WKNO-TV (PBS), channel 10; all Memphis, Tennessee and WMAV-TV (PBS), channel 18, Oxford, Mississippi. Of these stations, one (WMC-TV) is co-owned with radio stations WMC(AM) and WMC-FM. Additionally, it states, that the Memphis metropolitan area is served by 30 radio stations, including WHBQ(AM), and that 14 of these stations are co-owned AM/FM combinations resulting in 23 separate owners or voices. Thus, Flinn argues, if it is authorized to acquire Channel 50, there will be 37 total AM, FM and television stations in the Memphis market (not including channels 50 and 40), with 29 separately owned broadcast voices. It notes that this is only one voice short of the Commission's 30-voice standard. Moreover, Flinn points out that the Memphis market is also served by 3 daily newspapers, 7 weekly newspapers and a 50-percent cable penetration (294,600 television households).

14. *Channel 24's contentions.* In opposing the waiver, Channel 24 asserts that Flinn has failed to justify a one-to-a-market exception. In this regard, it maintains that Flinn cites no Commission precedent where the Commission has granted a waiver of Section 73.3555 of the Rules to permit the co-ownership of a new broadcast station of doubtful viability and an existing station in extreme financial difficulty. It maintains, such waivers typically are

awarded where the financial strength of one station will undergird the usually unprofitable operations of the other. Here, it states, Flinn documents the financial nonviability of both stations, raising substantial and material questions concerning the appropriateness of waiver relief in this case. Channel 24 maintains that the cases cited by Flinn are inapposite. In *Tulsa 23*, it states, the Commission granted the request for waiver on the basis of the applicant's statement that finances from the successful operation of its radio stations, its broadcast experience, and its substantial asset base would contribute to returning the failing UHF TV station to a viable operation. In *Holston Valley Broadcasting Corp.*, it claims, the Commission granted a waiver to allow a failing AM station to be operated under common ownership with a grandfathered AM-FM-TV combination, and that while there was some evidence that operation of the television station had been unprofitable, the Commission relied heavily upon the benefits to be derived from the combination with the other AM radio station to justify the waiver. Moreover, Channel 24 claims, Flinn's representations concerning the economies of scale to be realized from the proposed combination are speculative. While Flinn suggests that the resulting cost savings may enable it to expand the news and public affairs programming on the stations, Channel 24 asserts, the applicant makes no firm commitment to provide such programming.

15. *Disposition*. In amending the one-to-a-market rule, the Commission emphasized that the new waiver policy was not an abandonment of its continuing concerns for encouraging diversity of voices and economic competition. *Second Report and Order*, 4 FCC Rcd at 1752. Thus, in evaluating requests for waiver of the one-to-a-market rule, "our goal in all situations is to permit the public to benefit from such efficiencies of operation as may be achieved through the use of common facilities and staff, consistent with the maintenance of diversity and vigorous competition within the market area involved." *Amendment of Section 73. 3555* (partial reconsideration), 4 FCC Rcd at 6491. In acting upon requests where the stations are not in the top-25 television markets with 30 or more independent broadcast voices or where no claim of a "failed station" is availing, we have indicated that applicants must specifically demonstrate the public interest benefits of common ownership of stations ordinarily required by the one-to-a-market rule to be separately owned.

16. We find that the requested waiver by the applicant meets the public interest case-by-case criteria and will result in significant public service benefits without a substantial adverse impact on the level of diversity and competition in the Memphis market. Flinn has shown that the joint operation of the stations would result in significant cost savings and economic efficiencies that are critical to the continued operation of WHBQ(AM) and the activation of Channel 50. As noted by the applicant, WHBQ(AM) has been losing money since the separation of its operation from that of WHBQ-TV. Additionally, since the acquisition of WHBQ(AM) by Flinn, the station's ratings and competitive position have also declined. Moreover, Kyles submitted detailed information concerning the difficulties it encountered over a two-year period in its efforts to find new investors in Channel 50, or third parties to purchase the construction permit. These efforts included the services of a media consultant, media broker, and its communications counsel and contacts with the former competing applicants for Channel 50. In view of the financial losses incurred by WHBQ(AM), the reluctance of the banking community to finance the construction of Channel 50, the lack of interested investors, and the difficulty of finding a third party to whom to assign the construction permit, we believe that a grant of this application would serve the public interest. Indeed, it may offer the only opportunity for the activation of Channel 50 and the provision of a new television service to the public. A grant of this request would also assure the continuation of WHBQ(AM)'s operations without drastic cuts in programming and personnel. Flinn represents that cost savings from joint operation of the stations will be used to hire additional staff and to expand the local news and public affairs programming broadcast on both stations. More importantly, a grant of the waiver request will likely save a marginal AM radio station and bring about the activation of a television station in the Memphis market.[6]

17. WHBQ(AM) and the proposed television station are modest operations in comparison to the facilities of other stations in the market. Because the Memphis market is served by numerous media services, we do not find that the proposed common ownership would create any undue concentration of control of the media. As noted above, the Memphis market is served by a number of radio and television stations (37 AM, FM and television stations with 29 separately owned broadcast voices), 3 daily newspapers and 7 weekly newspapers and has a 50% of cable penetration. Under these circumstances, we do not find that common ownership of WHBQ(AM) and the proposed station on Channel 50 would have a substantial adverse impact on diversity of the media or competition in Memphis and its surrounding area. Accordingly, grant of the requested waiver would be in the public interest.

CONCLUSION

18. In view of the foregoing, we find that Channel 24 and West Tennessee have failed to either make a *prima facie* showing or present a substantial and material question of fact that grant of the instant assignment application is inconsistent with the public interest. Having determined that the applicants are fully qualified, we conclude that grant of the requested waiver and the proposed assignment of the Channel 50 permit would serve the public interest, convenience and necessity.

19. Accordingly, IT IS ORDERED, That the petition to deny filed by West Tennessee Broadcasting Corporation IS DENIED.

20. IT IS FURTHER ORDERED, That the petition to deny filed by Channel 24 Licensee Corp. IS DISMISSED and, when considered as an informal objection, IS DENIED.

21. IT IS FURTHER ORDERED, That the request for waiver of the Commission's one-to-a-market rule, Section 73.3555(b), IS GRANTED, and that the above-captioned application (BAPCT-891107KK) for consent to assignment of the construction permit for Channel 50, Memphis, Tennessee, from Kyles Broadcasting, Ltd. to Flinn Broadcasting Corporation, IS GRANTED.

22. IT IS FURTHER ORDERED, That copies of this Memorandum Opinion and Order shall be sent Certified Mail-Return Receipt Requested to the parties to this proceeding by the Mass Media Bureau.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Because no call letters have been assigned, we will refer to the station as Channel 50.

[2] Section 73.3598(a) of the Rules provides that a permittee will have 24 months from *the date of issuance* of the original permit within which to complete construction and apply for a license. *See* letter to *Lee J. Peltzman, Esquire* (MMB, dated August 7, 1984).

[3] Channel 24 and West Tennessee (petitioners) also raise questions regarding the completeness of the assignment application. They allege that the application as filed did not contain the showing required by Section 73.3597 of the Rules, verifying the legitimate and prudent expenses expended in connection with the filing and prosecution of the construction permit application. Additionally, the petitioners contend that the assignment application did not contain the showing required by Section 73.3535(a) with respect to assignment applications filed after the 12th month of the construction period. The applicants subsequently amended the application to supply the required documentation, which amended showing has not been challenged by Channel 24 or West Tennessee. Additionally, in view of our ruling regarding the status of the construction permit, we need not address further Channel 24's arguments concerning the construction permit. The application is now complete in all respects and petitioners do not challenge this fact.

[4] Flinn acquired WHBQ(AM) from RKO General, Inc. (RKO) on October 1, 1988. Prior to Flinn's acquisition of WHBQ(AM), the station was commonly owned and operated jointly with WHBQ-TV. The current WHBQ(AM) studios are co-located with WHBQ-TV and leased from RKO. Because the WHBQ(AM) studio lease will expire in October 1990, and the Commission has approved the acquisition of WHBQ-TV by Adams TV of Memphis, Inc., Flinn anticipates that it will be required to relocate the WHBQ(AM) studios.

[5] The Commission has issued a construction permit for WBUY(TV), channel 40, Holly Springs, Mississippi, which is in the Memphis market, but the station has not commenced broadcast operations. Sonlight Broadcasting Systems, Inc., a nonprofit corporation specializing in religious programming, recently acquired the construction permit for WBUY(TV).

[6] The fact that both WHBQ(AM) and Channel 50 have financial difficulties does not undercut our rationale for a waiver. The cost savings will make it easier for both stations to serve better the public interest.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
September 18, 1990

Released: October 11, 1990

Mr. J.B. Doherty 8940-LJ
c/o Radnor Broadcasting Company, Inc.
Fidelity Court, Suite 200
259 Radnor - Chester Road
Radnor, Pennsylvania 19087

Dear Mr. Doherty:

This refers to your application (BPCT-890209KF) for a construction permit for a new commercial television station to operate on channel 19 in Nacogdoches, Texas. In your application, you state that you are the Chairman of Region 56 Television Network, Inc. (Region 56), licensee of station KETK-TV, channel 56 (NBC), Jacksonville, Texas, and the managing general partner of TDH II Limited Partnership, which holds a 33-1/3% stock interest in Lone Star Broadcasting, Inc., the holding company of Region 56. The proposed operation of the new television station on channel 19 will result in the overlap of that station's predicted Grade B contour with that of KETK-TV which is inconsistent with Section 73.3555(a)(3) of the Commission's Rules.[1] However, you propose to operate channel 19 primarily as a satellite of KETK-TV and request that your application be granted pursuant to Note 5 of Section 73.3555 of the Commission's Rules.[2]

In support of your request, you submitted an engineering report which shows that the predicted Grade B contour of the proposed station on channel 19 would encompass 3,005 square miles and a population of 124,966; and that the predicted Grade B contour of KETK-TV encompasses 8,472 square miles and a population of 499,354. The overlap area would encompass 1,089 square miles and 59,869 persons which amounts to 36% of the area and 48% of the population within the proposed Grade B area of channel 19, and 13% of the area and 12% of the population within KETK-TV's Grade B area. Although not provided in your application, a staff study shows that there would be a very slight overlap of the Grade A contours of the two stations, encompassing less than 25 square miles. Citing *B. G. S. Broadcasting, Inc.*, 2 FCC Rcd 107 (1987); and *Pete J. Stathakas*, 59 RR2d 169 (1985), *aff'd* , 60 RR2d 1293 (1986), you claim that the degree of overlap of the Grade B contours of the proposed satellite station and KETK-TV is within the range in which the Commission has approved the operation of stations as primarily satellites. You note that all or part of the overlap area receives service from seven full-power television stations, including KTBS-TV, channel 3 (ABC), and KSLA-TV, channel 12 (CBS), Shreveport, Louisiana; KBTX-TV, channel 3 (CBS), Bryan, Texas; KLTV(TV), channel 7 (ABC), Tyler, Texas; KLMG-TV, channel 51 (CBS), Longview, Texas; KTRE-TV, channel 9 (ABC), Lufkin, Texas;[3] and KETK-TV, channel 56 (NBC), Jacksonville, Texas.

Additionally, you note that Nacogdoches is a small community of 31,252 persons, and is located in Nacogdoches County having a population of 46,786. Although located at the fringe, Nacogdoches is part of the Tyler-Longview-Jacksonville television market which the arbitron rating service lists as the nation's 124th largest. Therefore, you argue that the size of both the community of license and the marketplace to be served fall within the range of smaller non-urban television markets where the Commission has authorized satellite operations. *See e.g., B. G. S. Broadcasting, Inc.*, above; *W. Russell Withers, Jr.*, 2 FCC Rcd 3460 (1987); *Sainte Ltd.*, 3 FCC Rcd 185 (1988). You claim further that the community of Nacogdoches cannot economically support a viable full-service television station. In this regard, you point out that the area's economy is stagnant and that retail sales have declined in recent years, as illustrated by the fact that sales tax receipts declined by 4.3% from 1986 to 1987. You also note that in 1985, Nacogdoches County had "a median effective buying income" of $16,402, and was ranked 14th out of 21 counties in East Texas. Unemployment levels in the area, you assert, have remained above the national average; and that the unemployment rate for the "Lufkin-Nacogdoches Trade Area" averaged 8.0% in 1987. Moreover, you state, population growth in Nacogdoches County has not significantly changed in recent years with "housing starts" dropping 61% in number and 70% in dollar amount between 1984 and 1987. You also maintain that Nacogdoches has been affected by the recent economic problems facing Texas and the southwest generally. You argue that these economic problems, together with the presence of a VHF network affiliated satellite station in the market, and the heavy cable penetration in Nacogdoches County (61% of television households), reenforce your conclusion that the chance for a stand-alone station to operate successfully in Nacogdoches is problematic at best.

Further, you claim that the condition of the economy has affected the performance of the other television stations in the market. In this regard, you assert that KLMG-TV, the CBS affiliate in Longview, Texas, has been forced into bankruptcy. Over the past several years, you note, construction permits issued for channels 14 and 60 in Tyler, Texas, were deleted because the permittees were unable to proceed with construction. You state that, more recently, in February 1989, the construction permit for KCKU(TV), channel 14, Tyler, Texas, was deleted. Except for two brief periods (1957-58 and 1969-70), you aver, no party has been able to establish an ongoing operation on channel 19. You point out that in November, 1983, a construction permit for channel 19 was issued to East Texas Television Network, Inc., but that the permit, after several delays and extensions, was deleted by the Commission on March 11, 1988. *See East Texas Television Network, Inc.*, 3 FCC Rcd 1783 (1988), *recon. denied*, 4 FCC Rcd 363 (1989).

The station proposed here, you state, will be Nacogdoches' first local television station. You observe that Nacogdoches currently receives Grade B or better service from only two full-power television stations-KETK-TV, Jacksonville, and satellite station KTRE-TV, Lufkin, Texas. Furthermore, you assert, only four television stations are licensed to communities in the Tyler-Longview-Jacksonville market--KETK-TV, KLTV(TV), KTRE-TV, and KLMG-TV. You believe that the small number of local television services in the market may be

attributed to the market's location at a mid-point between the much larger television markets of Dallas-Fort Worth, Texas (8th largest) to the west and Shreveport, Louisiana-Texarkana, Texas (65th largest) to the east.

In addition, you assert that the operation of channel 19 primarily as a satellite of KETK-TV would enable you to achieve substantial economies of scale resulting in cost savings of nearly $500,000 annually in personnel costs alone. You propose to use these cost savings and efficiencies to develop a substantial amount of local news and public affairs programming for Nacogdoches. In this regard, you note that you plan to establish a full complement of local news and public service programming on channel 19, independent of KETK-TV, the parent station. Such programming, you contend, would be impossible without the economies resulting from satellite operation. Additionally, you pledge to use the savings realized from satellite operation to establish an internship program for students in conjunction with the Stephen F. Austin State University located in Nacogdoches. Lastly, you state that a grant of your request would provide approximately 65,000 persons with their first off-the-air NBC network programming, since 52% of the population and 62% of the area within the proposed channel 19 service area do not presently receive off-the-air NBC network programming.

In the past, we have authorized satellite stations in situations where overlap would exist between the parent and the satellite station as a means of providing television service to small communities having an insufficient economic base to support a full-service television station. One means of carrying out the goal of bringing service to these communities is reflected in Note 5 to Section 73.3555(a)(3) of the Rules, which relaxes our multiple ownership rules for a station operating as a satellite or "primarily" as a satellite. When satellites were first considered, they were authorized only in communities having no local off-the-air television station. *Multiple Ownership Rules*, 45 FCC 1728 (1964). Over the years, however, that standard has evolved in order to provide the public in smaller markets with a choice of programs. Additionally, we have stated that the economic justification for a satellite operation may be inferred from the small size of the market or from the small size of the community of license at the fringe of a larger market. *Capitol Broadcasting Co.*, 54 RR2d at 814, n. 9; *Pete J. Stathakas*, 59 RR2d 169 (1985), *recon. denied*, 60 RR2d 1293 (1986). What constitutes a sufficient showing to warrant satellite operation, then, has been established by case law and involves a balance of various factors, including the degree of overlap between the parent and satellite stations, the capacity of the market to support a full-service station, the level of service available in the market, and the financial difficulties of stations involved, as well as other relevant considerations. *See Further Notice of Proposed Rule Making* in MM Docket No. 87-8, FCC 90-279 (released September 18, 1990), paras. 2, 10.

On the basis of the information before us, we find that a sufficient showing has been made to justify a satellite operation in Nacogdoches. There is moderate overlap of the stations' Grade B contours and very slight overlap of the Grade A contours (less than 25 square miles) in an area which appears to be sparsely populated. In specific terms, the Grade B contour overlap in this case would encompass 1089 square miles and 59,869 persons, which amounts to 36 percent of the area and 48 percent of the population of the proposed satellite and 13 percent of the area and 12 percent of the population of the proposed parent. *Compare Mary R. Kupris*, FCC 90-275 released August 13 1990, *appeal pending sub nom. WLOS TV, Inc. v. FCC*, No.90-1251 (D.C. Cir. 1990). Furthermore, Nacogdoches currently receives only two Grade B signals one of which is itself a satellite station. *Id.* In this regard, we also note that your proposal will provide approximately 65,000 viewers with their first off-the-air NBC network programming.

Finally, we are persuaded that the decline in retail sales and "housing starts," the high unemployment rate, and the stagnant population, noted by you, also support your assertions that the economic condition of the Nacogdoches market will not support a stand-alone, full-service television station. This belief is further supported by the fact that KLMG-TV, also licensed to a designated community in the Tyler-Longview-Jacksonville market, is in bankruptcy, and that several other permittees have attempted, without success, to construct stations on channel 19 in Nacogdoches, and on two other channels in the market. In light of these facts, we believe that your proposal may offer the only opportunity for a viable local television operation in Nacogdoches.

For these reasons, we believe that operation of the proposed station on channel 19 "primarily" as a satellite of KETK-TV would serve the public interest. Accordingly, your application for a construction permit for a new commercial television station to operate on channel 19, Nacogdoches, Texas, IS GRANTED.

BY DIRECTION OF THE COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Section 73.3555(a)(3) of the Commission's Rules provides that "no license for a television broadcast station shall be granted to any party . . . if such party dirctly or indirectly owns, operates or controls one or more television broadcast stations and the grant of such license will result in any overlap of the Grade B contours of the existing and proposed stations...." However, Note 5 to Section 73.3555 states that "paragraphs (a) through (d) of this Section will not be applied to cases involving television stations which are primarily satellite operations," and "such cases will be considered on a case-by-case basis in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest."

[2] A 100-percent satellite station retransmits all of the programming of its parent, while a station categorized as "primarily a satellite" airs most of its parent's program but may produce up to 5 percent of its programming locally. *See e.g., Amaturo Group, Inc.*, 68 FCC2d 899 (1978).

[3] KTRE-TV is operated primarily as a satellite of KLTV(TV), Tyler, Texas.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE
Released: October 11, 1990

AT&T AND LOCAL EXCHANGE CARRIERS FILE REVISIONS TO THEIR COST ALLOCATION MANUALS

PUBLIC COMMENT INVITED

The American Telephone and Telephone Company and the following local exchange carriers (LECs) filed proposed revisions to the cost categories of their permanent cost allocation manuals for the separation of regulated and unregulated costs for the quarter ended September 30, 1990: The Ameritech Operating Companies, Central Telephone Company, Cincinnati Bell Telephone Company, Bell Atlantic, BellSouth Corporation, NYNEX Telephone Companies, Southwestern Bell Telephone Company and U S West, Inc.

Parties may file comments on the proposed revisions to the cost manuals no later than **November 7, 1990.** Replies should be filed by **November 21, 1990.** A copy of each pleading should be sent to Alicia Dunnigan, FCC, Common Carrier Bureau, 2000 L Street, N.W., Room 812, Washington, D.C. 20554 and to International Transcription Services, Inc., 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. Copies are available for public inspection and copying in the Accounting and Audits Division public reference room, 2000 L Street, N.W., Room 812, Washington, D.C. Copies are also available from ITS.

For further information contact Alicia Dunnigan, (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

MOBILETEL, INC.

For authority to construct and operate a Domestic Public Cellular Radio Telecommunications Service on Frequency Block B in the Louisiana 8 - St. James Rural Service Area — File No. 10538-CL-P-461-B-89

For authority to construct and operate a Domestic Public Cellular Telecommunications Service Radio on Frequency Block B in the Louisiana 9 - Plaquemines Rural Service Area — File No. 10539-CL-P-462-B-89

MEMORANDUM OPINION AND ORDER

Adopted: October 4, 1990; Released: October 11, 1990

By the Chief, Mobile Services Division:

I. BACKGROUND

1. On October 27, 1989, MobileTel, Inc. ("MobileTel") was named tentative selectee for the wireline Block B construction authorization for the Louisiana 8 - St. James Rural Service Area ("RSA").[1] On December 1, 1989, MobileTel was named tentative selectee for the wireline Block B construction authorization for the Louisiana 9 - Plaquemines RSA.[2] BellSouth Mobility, Inc. ("BellSouth") and Columbia Cellular, Inc. ("Columbia") filed individual applications for the wireline Block B Louisiana 8 - St. James RSA. Subsequent to the filing of these applications, BellSouth and Columbia entered into a partial settlement agreement forming Louisiana RSA No. 8 Limited Partnership ("St. James Petitioner") which has filed a petition to deny the application of MobileTel for the St. James RSA. BellSouth, a competing applicant in the Louisiana 9 - Plaquemines RSA, has filed a petition to deny against the application of MobileTel for the Plaquemines RSA. Mobiletel has filed oppositions. By letter dated May 24, 1990, the Mobile Services Division ("MSD") requested further information regarding wireline eligibility from MobileTel, whose response was filed on July 18, 1990. On August 6, 1990, BellSouth submitted reply comments to Mobiletel's response. Since the petitions to deny in the St. James and Plaquemines RSAs raise the same issues, we consolidate the above-captioned applications and resolve the issues in this Memorandum Opinion and Order.

II. CONTENTIONS OF THE PARTIES

2. In their petitions, St. James Petitioner and BellSouth ("Petitioners") argue that, at the time that MobileTel filed its application for the above-captioned markets, it was not qualified to be a wireline cellular applicant because it was not providing landline telephone service in the St. James and Plaquemines RSAs. In support of this argument, Petitioners assert that Section 22.902(b) of the Commission's Rules requires that MobileTel, at the time its applications were filed, was providing landline basic exchange telephone service to the St. James and Plaquemine RSAs and that MobileTel's claim of wireline eligibility through its telephone company affiliate's provision of Basic Exchange Telecommunications Radio Service ("BETRS"), does not constitute the provision of public landline telephone service as required by the rules.

3. In opposition, MobileTel contends that its affiliate, Lafourche Telephone Company ("Lafourche"), like MobileTel, a wholly-owned subsidiary of SJI, Inc., is a certificated local exchange carrier authorized by the Louisiana Public Service Commission to provide basic switched telephone service in locations including the Plaquemines and St. James RSAs. Further, MobileTel asserts that for more than fifty years, Lafourche has provided basic local exchange telephone service to its customers in southeastern Louisiana some of whom live in remote wetland areas which make it impractical to use wire or cable facilities for the provision of basic service in these areas. Consequently, MobileTel argues, Lafourche decided in 1988 to integrate its local exchange network and provide remote customers in these RSAs with telephone service utilizing BETRS. For this BETRS service, customers use standard telephone equipment, and receive seven-digit telephone numbers which are listed in the same telephone directories as other subscribers and are generated from Lafourche central offices. Moreover, MobileTel asserts that the Louisiana Public Service Commission does not distinguish BETRS from public landline message telephone service and that Lafourche customers receive identical basic exchange telephone service regardless of whether the Lafourche "loop" to connect remote subscribers to its central offices utilizes wire, radio or fiber optic cable as a transmission medium.

III. DISCUSSION

4. The issue to be resolved in this case is whether, MobileTel is eligible to apply for and be granted Block B (wireline) licenses in the above-captioned RSA markets. Section 22.902(b) of the Commission's Rules provides, in pertinent part, that:

> . . . Common Carriers not also engaged in the business of affording public landline message telephone service will be assigned frequencies from Cellular System A. Common Carriers engaged directly or indirectly in the business of affording public landline message telephone service will be assigned frequencies from cellular System B in those areas in which they provide such landline service in some portion of the cellular market . . . .

Section 22.2 of the Commission's Rules defines wireline common carriers as "Common carriers which are in the business of providing landline local exchange telephone service." In adopting this definition, the Commission de-

termined that the word "landline" was necessary in order to distinguish between radio common carriers and common carriers which are in the business of providing local exchange telephone service. *Revision and Update of Part 22 of the Public Mobile Radio Services Rules*, 95 FCC 2d 769, 772 (1983).

5. The separate allocation of frequencies mandated by Section 22.902(b) is known as the wireline set aside. In adopting this separate allocation scheme for cellular licensing, the Commission stated that it was convinced that the separate allocation is the most practical way to make cellular service available to the greatest amount of people in the most expeditious manner possible. *Cellular Communications Systems*, 86 FCC 2d 469, 488-89 (1981). In Part 22 services other than cellular, the Commission has permitted wireline companies to apply for wireline frequencies in any market, without regard to where they are doing business as a wireline. *Bonduel Telephone Co.*, 68 FCC 2d 497 (1978). However, in order to achieve its objective of rapid implementation of cellular service, the Commission rejected the *Bondeul* approach for wireline cellular applicants.

6. On reconsideration of *Cellular Communications Systems*, *supra*, the Commission reaffirmed its findings, stating that separate allocation constitutes the most practical way to achieve the goals of making quality cellular telephone service available to the public as rapidly as possible as well as promoting competition. *Cellular Communications Systems*, (*Order on Reconsideration*), 89 FCC 2d 58, 70 (1982). The Commission concluded that it considered cellular service to be an extension of local exchange service, and expected that wireline carriers would be able to rely upon their expertise and knowledge of their respective service areas to make quality cellular service available to their communities in an expeditious manner. *Id.* at 71.

7. When the Commission decided to use lotteries for the selection of mutually exclusive cellular applications, it revisited the issue of the wireline set aside and decided to maintain the set aside in order to achieve its original goals and emphasized that it did not wish to prevent rural telephone companies from entering the cellular market. The Commission stated that it was concerned with the continued financial viability of small telephone companies which is necessary to achieve the Commission's goal of universal service to as many areas of the country as possible. In addition, the Commission stated that separate allocations, coupled with the wireline presence requirement of Section 22.902(b), has been effective in expediting the provision of cellular service to the public because the wireline presence requirement limits the number of mutually exclusive applications. *Cellular Lotteries*, 98 FCC 2d 175, 192-98 (1984).

8. Recently, the Commission reaffirmed the wireline set aside and again emphasized that among the reasons for adopting the set aside was that it would assure that both large and small telephone companies would have an opportunity to participate in providing cellular service. *See Rules for Rural Cellular Service*, (*Order on Reconsideration*), 2 FCC Rcd 3366, 3369 (1987).

9. In 1988, the Commission established a new radio service known as Basic Exchange Telecommunications Radio Service ("BETRS") which is defined in Section 22.2 of the Commission's Rules as a public message communication service between a central office and subscribers located in rural areas. *Report and Order*, 3 FCC Rcd 214 (1988). In *Report and Order*, the Commission stated that "BETRS is provided so that radio loops can take the place of (expensive) wire or cable to remote areas. It is intended to be an extension of intrastate basic exchange service." *Id.* at 217. With regard to the eligibility issue, the Commission stated that "[B]ecause BETRS is provided as an extension of basic exchange service, we will require that a service provider be a State certified local exchange carrier or, if not a certified LEC, have some form of permission from the State to provide basic exchange radio service." *Id.*

10. Louisiana is one of the states which do not require their Public Service Commission ("PSC") to issue certificates to carriers authorized to provide local exchange service. However, MobileTel, in its response to the MSD letter requesting information regarding its wireline eligibility, submitted letters from the Louisiana PSC which clearly state that Lafourche has been authorized to provide basic exchange telephone service in the areas which include the Plaquemines and St. James RSAs, and that in 1988, began providing local exchange service, by means of BETRS, to areas within these two RSAs. The Louisiana PSC further states that it does not distinguish BETRS from public landline message telephone service and that all Lafourche services are tariffed under the General Subscriber Services Tariff and carry the same monthly basic rate for local exchange services.

11. It is clear from the foregoing that Lafourche is an independent wireline telephone company authorized in Louisiana as a local exchange carrier to provide basic exchange telephone service in territories of Louisiana including the Plaquemines and St. James RSAs. In 1988, Lafourche began providing and still provides local exchange service, by means of BETRS, in the Plaquemines and St. James RSAs. As stated above, the Commission intended, in establishing this new radio service, that BETRS be an extension of intrastate basic exchange service and be provided so that radio loops can take the place of expensive landlines (via cable or wire) to remote areas. *Report and Order*, 3 FCC Rcd at 217. The clear intent of the Commission in later establishing BETRS was to facilitate the provision of basic exchange service to subscribers in remote areas by local exchange carriers like Lafourche. At the time that the Commission promulgated the eligibility requirement set forth in Section 22.902(b), BETRS was not a service under the rules and, therefore, was not specifically addressed in the wireline set aside scheme. Given the reason for adopting the wireline set aside and the reasons for establishing the BETRS service as an extension of basic exchange telephone service, we belive that the Commission's intent in establishing the wireline set aside would be to allow a wireline carrier which provides BETRS service to qualify for a Block B license. Given that MobileTel's affiliate, Lafourche, is undisputably a wireline carrier which provides basic exchange telephone service to customers in the St. James and Plaquemines RSAs, through BETRS as an extension of its wireline system, Section 22.902(b) permits MobileTel to file Block B cellular applications in these RSAs.

12. We recognize that a company providing only BETRS does not qualify an applicant as a wireline for purposes of Section 22.902(b). In this regard, MobileTel's eligibility is readily distinguishable from cases in which the applicant sought wireline eligibility based not on the provision of basic exchange service, but rather on the basis of providing paging or point-to-point microwave

service. *See, e.g., Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, (Further Reconsideration Order),* 90 FCC 2d 571, 578 (1982) (rejecting claim of wireline status based on provision of paging service); *The Offshore Telephone Company,* 3 FCC Rcd 4601 (1988) (rejecting claim of eligibility based on provision of point-to-point microwave service). However, where a company with permission from the State to provide basic exchange radio service or certificated as a local exchange carrier, chooses to use BETRS as an extension of its wireline basic exchange service, this election does not disqualify the local telephone company from filing for the Block B wireline frequencies for RSAs in which it provides BETRS service.

IV. CONCLUSION AND ORDERING CLAUSES

13. In view of the foregoing, we find that MobileTel meets the wireline eligibility standards of Section 22.902(b) of the Rules and is legally, technically, financially and otherwise qualified to be a Commission licensee. Further, we find that granting the pending applications for the Louisiana 8 - St. James and Louisiana 9 - Plaquemines RSAs would be in the public interest and promote the efficient provision of cellular services to the public.

14. Accordingly, IT IS ORDERED that the applications of MobileTel, Inc. (File Numbers 10538-CL-P-461-B-89 and 10539-CL-P-462-B-89) ARE GRANTED. This authorization does not include the right to any interference protection in any areas outside the Louisiana 8-St. James and Louisiana 9-Plaquemines RSAs and is also conditioned upon Mobiletel's coordinating with current and future co-channel licensee(s) in the area outside the Louisiana 8-St. James and Louisiana 9-Plaquemines RSAs. The licensee herein is put on notice that in the event any current or future MSA/RSA licensee encounters interference from any 39 dBu extension(s), the licensee herein will have to change frequencies in those cell(s) or pull back their 39 dBu contour to eliminate the interference due to the extension. All other mutually exclusive applications in this market are hereby dismissed.

15. IT IS FURTHER ORDERED that the Petitions to Deny filed by BellSouth Mobility, Inc. on behalf of Columbia Cellular, Inc. and Louisiana RSA No. 8 Limited Partnership ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Public Notice, Report No. CL-90-23 (released October 27, 1989).

[2] Public Notice, Report No. CL-90-55 (released December 1, 1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of the Maritime Services Rules (Part 80) to Redesignate Vessel Traffic Services (VTS) Channels in the Port Area of New York for Exclusive VTS System Use

Cancellation of Conditional Grants of Operating Authority

ORDER

Adopted: September 26, 1990; Released: October 11, 1990

By the Commission:

I. INTRODUCTION

1. This Order amends Section 80.383(a) of the Commission's Rules, 47 C.F.R. § 80.383(a), to redesignate two VHF frequencies in the New York Vessel Traffic Services (VTS) area for exclusive use of the VTS system, and cancels the conditional grants of operating authority issued under a previous *Order* discussed below.

II. BACKGROUND

2. A VTS system is used as an advisory service to coordinate vessel movement and prevent collisions in high vessel traffic areas of the United States. Vessels report information related to position, navigation, and conditions affecting their ability to navigate to the U.S. Coast Guard, which then tracks the vessel's position and movement. The VTS system uses VHF marine radiotelephone equipment to exchange voice communications on specific channels that are dedicated to VTS operations. Marine VHF channels 11 and 14 are assigned to the VTS system in New York. The Coast Guard requires that certain large ships, tow and tug boats, dredges, and floating platforms participate in VTS systems.

3. On February 15, 1989, we released an *Order* [1] that amended Section 80.383(a) to permit the use of, *inter alia*, two marine VHF frequencies in the New York VTS area[2] by eligible users for other than VTS operations. We took this action because the Coast Guard had discontinued this VTS system due to budgetary constraints, pending the system's possible re-establishment at a later date. On April 30, 1990, the Coast Guard informed the Commission that, as a result of a Congressional directive and appropriation of funds, the New York VTS system will be re-established.[3]

III. DISCUSSION

4. By our previous *Order*, we amended the rules to permit eligible users to be licensed on VHF channels 11 and 14 in the New York VTS area. Because the Coast Guard had acted due to budgetary constraints and re-establishment of the VTS system was possible, we granted licenses for coast stations under that *Order* only on a conditional basis, contingent on a continuation of the Coast Guard policy, thereby recognizing that the rules would be changed again if the Coast Guard changed its policy. The Coast Guard has informed us that it will re-establish the New York VTS system. Therefore, we are amending the rules to redesignate the two channels for exclusive VTS system use. This will facilitate the Coast Guard's mission to promote vessel traffic safety in the New York area.

5. As noted, in our previous *Order* we specified that, if the VTS system for New York were re-established, any coast station licensees authorized pursuant to the above-discussed conditions might be required to cease operation. This present Order serves as a notice that such operations must cease by October 1, 1990. We will also individually notify the five affected private coast station licensees of the Coast Guard's plans to re-establish the New York VTS system, and of the termination of their authorization. Prior to the effective date of this Order, we will work with the affected licensees to arrange alternative channels for their use.

IV. PROCEDURAL MATTERS

6. This amendment has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520, and found to contain no new or modified form, information collection or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

7. This change constitutes a minor, non-controversial amendment to our rules in which the public is not likely to be interested. Therefore, we find for good cause that compliance with the notice and comment procedures of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. § 553(b)(B).

V. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that, under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) & 303(r), Section 80.383(a) of the Commission's Rules, 47 C.F.R. § 80.383(a), IS AMENDED as set forth in the Appendix below, effective **October 1, 1990.** Furthermore, IT IS ORDERED that the conditional grants of operating authority pertaining to the New York VTS system channels ARE CANCELLED for the following five licensees, effective October 1, 1990: Harbor Ready Marine, Inc, call sign WHU941; Little Toot Marine, Inc., KMC918; Marine Rescue Services, Inc., KTD486; Seatow, Inc., KVF897; and Frank H. Wetmore, Inc., WHW673.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.383(a) is amended by removing footnote designator "1" from next to the New York entries in the "Geographic areas" column of the Table and by revising the text of footnote 1 below the Table, to read as follows:

§80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) Assigned frequencies:

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
156.250 . . .	Seattle.
156.550 . . .	New York, New Orleans[1],Houston.
156.600 . . .	New York, New Orleans[1], Houston.
156.700 . . .	New York, New Orleans[1], Seattle.

FOOTNOTE TO THE APPENDIX

[1] Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3 that are applicable to the VTS system. Availability is a result of the closure of the VTS system for the port area of New Orleans. If the United States Coast Guard re-establishes this system, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditioned upon the continued availability of the frequency for non-VTS use.

FOOTNOTES

[1] Order, 4 FCC Rcd 1590 (1989).

[2] This geographic radio protection area is defined by the Coast Guard. *See* Regulations for Required Participation in Vessel Traffic Service, New York, dated Jan. 12, 1990, 55 Fed.Reg. 3704, 3707 (Feb. 2, 1990) (Coast Guard notice of proposed rule making to determine classes of vessels in New York VTS system, and vessel operating procedures). The proposed Coast Guard rules include proposed 33 C.F.R. § 161.580, which defines the "VTSNY Area."

[3] Letter from J.D. Hersey, Chief, Marine Radio Policy Branch, U.S.C.G., to Robert H. McNamara, Chief, Special Services Division, F.C.C. (April 30, 1990); *see* Regulations for Required Participation in Vessel Traffic Service, New York, *supra* note 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-183

In re Applications of

WOODS COMMUNICATIONS GROUP, INC.	File No. BPCT-870904KJ
PEARS BROADCASTING, INC.	File No. BPCT-871109KF
GILES TELEVISION, INC.	File No. BPCT-871110KE
CALDWELL BROADCASTING LIMITED PARTNERSHIP	File No. BPCT-87111OKH
KTVE, INC.	File No. BPCT-871110KL

For Construction Permit for a
New Television Station on Channel 11,
Columbia, Louisiana

Appearances

John B. Kenkel Esq. and *Scott Cinnamon, Esq.* on behalf of Woods Communications Group, Inc.; *John T. Scott, III, Esq.*, and *William D. Wallace, Esq.* on behalf of Pears Broadcasting, Inc.; *William J. Sill, Esq., Donald J. Evans, Esq.* and *James A. Kline, IV, Esq.* on behalf of Giles Television, Inc.; *James P. Denvir, Esq.* and *Paul S. Pien, Esq.* on behalf of Caldwell Broadcasting Limited Partnership; *Robert A. Beizer, Esq., R. Clark Wadlow, Esq.* and *Evan D. Carb, Esq.* on behalf of KTVE, Inc.; and *Charles E. Dziedzic, Esq.* and *Y. Paulette Laden, Esq.* on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL

Issued: September 28, 1990; Released: October 16, 1990

PRELIMINARY STATEMENT

1. This proceeding involves the mutually exclusive applications of the five remaining applicants in this case: Woods Communications Group, Inc., ("WoodsCom"), Pears Broadcasting, Inc. ("PBI"), Giles Television, Inc. ("Giles TV"), Caldwell Broadcasting Limited Partnership ("Caldwell") and KTVE, Inc. ("KTVE").[1] The applicants are competing for a construction permit for a new TV station on Channel 10 at Columbia, Louisiana.

2. The following issues were set forth in the *Hearing Designation Order* ("HDO"):

> (a) To determine, with respect to each applicant, except Woods Communications, Inc., Love Television Partnership, Caldwell Broadcasting Limited Partnership and Lanford Telecasting Co., whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.
>
> (b) To determine, with respect to Lanford Telecasting Co., Inc., whether circumstances exist which would make a satellite operation necessary for Columbia, Louisiana.
>
> (c) To determine, with respect to Woods Communications Group, Inc. and Richard William Wainwright, whether circumstances exist which would warrant a waiver of Section 73.610 of the Commission's Rules.
>
> (d) To determine which of the proposals would, on a comparative basis, best serve the public interest.
>
> (e) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

The air hazard issue was resolved in favor of KTVE and PBI by *Orders* FCC 88M-2269 and FCC 88M-2270, both released July 15, 1988. The air hazard issue was resolved in favor of Giles TV in *Memorandum Opinion and Order*, FCC 88M-2543, released August 4, 1988. The standard comparative issue was expanded to consider comparative coverage. *Order* FCC 89M-56, released January 9, 1989.

3. A conference was held on November 16, 1989, at which procedural and trial dates were set. *Order*, FCC 89M-2677, released November 10, 1989. Written frozen testimony was exchanged on December 29, 1989, and hearings were held in Washington, D.C., on January 16, 22, 23, 24, 25, and February 13; 14, and 21, 1990. The record was closed on February 21, 1990, except for the submission of a stipulation which was submitted on March 9, 1990. *Order* FCC 90M-359, released February 23, 1990. The Presiding Judge established April 27, 1990, and May 25, 1990, as the dates for filing Proposed Findings of Fact and Conclusions of Law and Reply Proposed Findings of Fact and Conclusions of Law, respectively. *Id.*

4. There are no qualifying issues to consider. This decision will only address the comparative issues in accordance with the Commission's standards at 47 C.F.R. §1.267(b). The burdens of proof on the issues are with the respective parties. This is an administrative proceeding tried under §5 of the Administrative Procedure Act [5 U.S.C. §§551 *et seq.*] and the preponderance of the evidence standard applies. *Steadman* v. *SEC*, 450 U.S. 91 (1981). Testimony is cited where practicable by the name of the witness followed by the transcript page number. References to exhibits are to the numbered exhibits of each applicant that were admitted into evidence at the hearing. References to proposed findings and conclusions are introduced by "PFC."

FINDINGS OF FACT

5. Since the applications are mutually exclusive, a consolidated factual hearing was conducted on all issues wherein the parties presented evidence and conducted cross-examination. *Ashbacker Radio Corp.* v. *F. C. C.*, 325 U.S. 327, 333 (1945); *U. S.* v. *Storer Broadcasting Co.*, 351 U.S. 192, 202 (1956) (parties have right to present oral and documentary evidence and to conduct cross-examination).

Comparative Coverage

6. The parties were required to submit comparative coverage evidence in order to permit consideration of the areas and populations within the respective Grade B contours and the availability of other primary aural services of Grade B or greater intensity. The findings are based on Joint Engineering Exhibits 1 and 2 that were received in evidence on January 16, 1990 (Tr. 222) and Joint Engineering Exh. 3 that was received in evidence on February 13, 1990 (Tr. 1594).[2]

Areas and Populations

7. The following are the areas and populations which the applicants will cover within their respective 1 mV/m contour (Joint Engineering Exh. 1):

Total Areas And Populations

Applicant	Area (sq. km.)	Population
WoodsCom	45,497	743,311
PBI	43,251	720,275
Giles TV	44,159	731,653
Caldwell	43,543	723,387
KTVE	45,551	740,823

Uncommon Service Areas

8. The population and area figures for the uncommon service areas, and the availability of other commercial television services in those areas, are as follows:

Population

No. of Other TV Services Available	Giles TV	Caldwell	PBI	WoodsCom.	KTVE Inc.
0	0	0	0	0	0
1	0	0	0	0	0
2	3,030	2,548	2,105	2,911	3,778
3	9,444	5,999	5,488	8,783	9,901
4	22,629	21,210	19,505	24,541	24,098
5 or more	35,287	32,367	31,914	45,813	41,783

Area (Sq. kms.)

No. of Other TV Services Available	Giles TV	Caldwell	PBI	WoodsCom.	KTVE Inc.
0	0	0	0	0	0
1	0	0	0	0	0
2	629	554	431	618	784
3	1,748	1,256	1,207	1,635	1,787
4	1,956	1,574	1,687	2,197	1,871
5 or more	2,592	2,925	2,692	3,813	3,875

(Jt. Engineering Exh. 2, Table III).

9. The data establish that there are at least two services already existing in the uncommon area proposed to be served. All five applicants plan to provide a third and fourth service. The differences range approximately from 4% to 80%, which are found to be *de minimis*. The differences in total population to be served ranging from .3% to 3.2% are of even less significance.

Media Diversification

Woods Communications Group, Inc.

10. The controlling person of WoodsCom's considerable broadcast affiliations is Mr. Charles Woods, who also controls the prosecution of the application in this case as its 100% voting shareholder. WoodsCom is the licensee of KARD-TV, UHF Channel 14, West Monroe, Louisiana. WoodsCom pledged to divest all interest in that facility should its application in this proceeding be granted. (WoodsCom Exh. 5, p.1.) WoodsCom is also the licensee of (WTVY(TV), Channel 4 and WTVY-FM, Dothan, Alabama; KDEB(TV), Channel 27, Springfield, Missouri and its related TV translator station K08GN, Kimberling City, Missouri; WTVW(TV), Channel 7, Evansville, Indiana; KESE-FM (formerly KZZQ), Amarillo, Texas; WACV(AM), Montgomery, Alabama. Also, as of the date Integration and Diversification Statements were exchanged in this proceeding, WoodsCom was licensee of KJBZ-FM, Laredo, Texas. (*Id.*) But an application to assign the KJBZ license was granted on December 14, 1989, and that assignment has been effected.

11. Mr. Woods is also the President, 100% shareholder and a director of Charles Woods Television Corp. which is the licensee of KLBK, Lubbock, Texas. That corporation was acquired in 1981. KLBK was acquired in 1983 and WACV(AM), KESE-FM and KDEB(TV) were all acquired in 1985. (*Id.*)

12. Mr. Woods also is the individual licensee or permittee of five LPTV/TV translator stations: W69BH, Evansville, Indiana; W04BN, Orlando, Florida; W0YBP, Ocala, Florida; W02BE, Lake City, Florida and W33AE, Newberry, Florida. (*Id.*) He also is the 100% voting stockholder of the licensee of W04BR, Atlanta, Georgia. He has an application pending to place the license in his name individually. He also is officer and minority stockholder (with option to purchase balance of stock) of the permittee corporation for W18AB, Naples, Florida. (*Id.*)

Pears Broadcasting, Inc.

13. PBI holds no ownership interest in any broadcast station or other medium of mass communications. There are broadcast interests of PBI's two principals, Thomas G. Pears and Tom D. Gay that are accounted for below. PBI claims timely divestments or commitments to divest as to those media interest.

Thomas G. Pears

14. As of December 22, 1987, the "B" cut-off date, Mr. Pears was Vice President and a Director of Texoma Broadcasters, Inc., then licensee of Station KLFY-TV, Lafayette, Louisiana. Mr. Pears was also, at that time, the General Manager of KLTY-TV. In PBI's application here, Mr. Pears committed to resign as an officer and director of Texoma and as General Manager of KLFY-TV in the

event the Columbia, LA application is granted. (*See* Pears Broadcasting, Inc. FCC Form 301, "Commitment to Divest," filed December 21, 1987.) In May 1988, Texoma assigned the license of KLFY-TV to Young Broadcasting Company. Mr. Pears resigned as General Manager as reported in an amendment that was dated June 22, 1988. The amendment was accepted by the Commission on July 20, 1988 (FCC 88M-2374, released July 22, 1988). In this amendment, Mr. Pears reiterated his commitment to terminate all other broadcast interests in the event PBI's application is granted.

15. On July 12, 1988, Mr. Pears was elected President and a Director of KWTX Broadcasting Company, licensee of stations KWTX-TV, KWTX(AM) and KWTX-FM, Waco, Texas. This was reported in an amendment dated August 3, 1988, that was accepted on September 12, 1988. *See Order* FCC 88M-3001, released September 14, 1988. In this amendment, Mr. Pears pledged to terminate his position and interests with KWTX Broadcasting and its stations if PBI's application were granted.

16. Subsequently, in December 1988, Mr. Pears became President and a Director of Brazos Broadcasting Company, licensee of KBTX-TV, Bryan, Texas a satellite of KWTX-TV. (PBI, Tr. 457-61.) Brazos is controlled by KWTX Broadcasting and its shareholders. (Brazos Broadcasting Co., Ownership Report, filed March 22, 1990.) Since December 1989, Mr. Pears has also been serving temporarily as General Manager of KWTX-AM/FM. (Pears, Tr. 432-33, 444.) These positions were reported in an amendment dated December 26, 1989, and accepted by the Commission on January 18, 1990 (FCC 90M-130, released January 22, 1990). In this amendment, Mr. Pears reaffirmed his commitment to divest all of his interests in and positions with other broadcast stations if PBI's application were granted.

17. At the hearing in this proceeding, Mr. Pears reiterated his commitment to resign all interests in and positions with other broadcast stations in the event the application of PBI is granted. (PBI Exh. 1; Pears, Tr. 460.) But with respect to his positions as President and Director of Brazo Broadcasting, Mr. Pears admitted that he was a year late in reporting by amendment. (Pears, Tr. 441-42, Giles TV Exh. 7.) Mr. Pears admitted that when he became President and Director of KWTX Broadcasting he was aware that he was or would also be a Director of Brazo Broadcasting. (Pears, Tr. 462.) It is found as a fact that PBI failed to timely promise to divest Mr. Pears' interest as President and a Director of Brazo Broadcasting. But the failure is *de minimis* under the circumstances of Pears having no ownership, KWTX being a satellite station, and there being a divestment promise of Mr. Pears' positions with KWTX Broadcasting, the controlling entity.

Tom D. Gay

18. At the "B" cut-off, Mr. Gay owned the following radio stations:

AM Station	FM Station	Location
KCTO	KCTO-FM	Columbia, Louisiana
KFNV	KFNV-FM	Ferriday, Louisiana
KJNA	KCKW-FM	Jena, Louisiana

In PBI's Columbia, LA application, filed on December 21, 1987, he had committed to terminate all ownership interests and to terminate all relationships with these stations.

19. On October 31, 1988, Mr. Gay acquired KAPB(AM) and KAPB-FM, Marksville, Louisiana. Those acquisitions were reported in an amendment dated November 21, 1988. *See Order* FCC 89M-61, released January 9, 1989. In that amendment, Mr. Gay pledged to divest his interest in and to terminate all relationships with KAPB(AM) and KAPB-FM.

20. On November 10, 1989, Mr. Gay acquired KMAR(AM) and KMAR-FM, Winnsboro, Louisiana. It was reported in an amendment dated December 12, 1989, and accepted on January 4, 1990. *See Order* FCC 90M-27, released January 5, 1990. In that amendment, Mr. Gay committed to divest his interest in and relationships with KMAR(AM) and KMAR-FM.

21. At the hearing in this proceeding, Mr. Gay testified to his commitment to divest his interest in and terminate all relationships with each of the above-named broadcast stations in the event that PBI's application is granted. (Pears Exh. 2; Gay, Tr. 519.)

Giles Television, Inc.

22. Neither Giles TV the applicant, nor Mr. Giles, the applicant's sole voting shareholder, has any ownership interest in any medium of mass communications. (Giles TV Exh. 3.) However, Giles partner, Love Broadcasting Company has attributable interests in the following stations: WTYX(FM) and WKXI(AM), Jackson, Mississippi; WAEV(FM) and WSOK(AM), Savannah, Georgia; WLOX-TV, Biloxi, Mississippi; KDRV(TV), Medford, Oregon; DKDF-TV, Pulma Falls, Oregon; and translator stations K5ZAS, Almont/Klamath Falls, Oregon; K17BA, Yreka and Montegue, California; K15BP, Grants Pass, Oregon; K51BV, Cave Junction and Selma, Oregon; K13UR, Klamath Falls, Oregon; and K45BJ, Ruch and Applegate, Oregon. (Caldwell, Exh. 11.) The attribution of these broadcasting properties to Giles TV is concluded from the control in the Giles TV enterprise that is exercised by Love. *See* Para. 53, *infra*.

Caldwell Broadcasting Limited Partnership

23. Neither Caldwell, nor its general partner Caldwell Communications Corporation ("CCC"), nor any of CCC's principals, has an interest in a medium of mass communications. Also, none of Caldwell's limited partners holds any attributable interest in any medium of mass communications. (Caldwell Exh. 2; Winters, Tr. 904-05; Schendle, Tr. 1780.)

KTVE, Inc.

24. KTVE is licensee of KTVE(TV), El Dorado, Arkansas. KTVE has timely pledged to divest itself of this station in the event of a grant of its application for the allocation in Columbia, LA. (KTVE Exh. 3.) Gray Communications Systems, Inc. ("Gray"), the sole stockholder and parent company of KTVE, wholly owns WALB-TV, Inc., licensee of WALB-TV, Albany, Georgia, and WJHG-TV, Inc., licensee of WJHG-TV, Panama City, Florida. In addition, Gray owns all of the stock of the Albany Herald Publishing Company, Inc., publisher of *The Albany Her-*

ald, a daily newspaper in Albany, Georgia. None of the officers or directors of KTVE or Gray hold any other attributable interest in any broadcast station or other medium of mass communications.

25. Terry P. McKenna, Executor for the Estate of James H. Gray, Sr., votes 51.7% of Gray's common stock. (KTVE Exh. 2.) Sandler Associates, a New York Limited Partnership, owns 11.4% of Gray's common stock. (KTVE Exh. 3.) Sandler and its principals hold interests in entities with significant numbers of other media interests. Those interests are set forth in detail in KTVE's Exh. No. 3, but are found to be non-attributable to KTVE.[3]

Standard Comparative Issue

Woods Communications Group, Inc.

26. WoodsCom filed as a corporation that is owned and controlled by Charles Woods ("Woods").[4] Woods, the control person who will direct all of WoodsCom's business, proposes to work at the station from 20 to 40 hours per week during the first year during construction, development and initial operation. (WoodsCom Exh. 2.) But after the first year of start-up, he will devote only the time required of a CEO. Because of the uncertainty of the evidence offered by Woods on the manner and hours of his involvement in day-to-day management after the company commences full-time operations, WoodsCom receives no credit for Mr. Woods' proposed integration. (WoodsCom Exh. 2; Woods Tr. 301.)[5]

27. Woods resides at Incline Village, Nevada, where he has lived since mid-1989 and where he plans to continue to reside because the climate is conducive to his health. He also maintains a second residence in Dothan, Alabama, the city of license for WoodsCom's stations WTVY-TV and WTVY(FM). (Woods, Tr. 282-85.) Notwithstanding his long-term future commitment to a Nevada residence and his established ties to Dothan, Woods testified that he will obtain an apartment in Columbia to permit his on-the-job oversight during the station's start-up. But that would be a temporary as-needed facility that would not receive credit for a local residence. (WoodsCom, Tr. 282-85, 301-03.)

28. WoodsCom also claims a minority enhancement credit for Mr. Woods' alleged Native American heritage. He has a certificate of membership in the Echota Cherokee Tribe of Alabama. (WoodsCom Exh. 2 at 1.) He testified that his great-grandmother was a full-blooded Cherokee which would make Woods a one-eighth Cherokee Native American. (Woods, Tr. 332-3.) While originally a member of the United Cherokee Tribe of Alabama, that tribe disbanded and he thereafter joined the Echota Tribe. (PBI Exh. 4.)

29. No specific documentation to evidence Mr. Woods claim of Native American ancestry was introduced into evidence. He was not raised on a Native American reservation; nor has he ever lived on one. (Woods, Tr. 324.) Woods does not generally socialize or associate with Native Americans. Nor does he hold himself out as a Native American. (Woods, Tr. 324.)

30. There are inconsistencies in Woods' claim of heritage and other weaknesses in the claim of WoodsCom for a minority preference. Initially, WoodsCom testified that he was one-quarter Cherokee. But after being shown an affidavit which he had submitted for the same purpose in another Commission proceeding, he changed his testimony to being only one-eighth Cherokee. (Woods, Tr. 303, 323, 331-33.) At no time did Woods offer documentary proof of membership in the United Cherokee Tribe of Alabama. The claim of membership in the Echota Tribe was at or about the time that WoodsCom was pursuing an unrelated permit before the Commission. (Woods, Tr. 326.) Recognized source material establishes the fact that the Echota Cherokee are not a recognized tribe.[6] Woods claims that he pays dues to the tribe and also claims to have attended some tribal activities. But no documentary evidence of dues payments was offered and no tribal activities were cited. (Woods, Tr. 328.)

31. Finally, Woods was confronted with an unresolved misrepresentation issue based on his Native American ancestry claim that was added against Woods in another proceeding. Woods vacillated in his testimony, first contending that the issue had been favorably resolved, then admitting, when confronted with documents, that the application was dismissed without resolving the issue. (PBI Exh. 3; Woods, Tr. 306, 322.) And Woods specifically responded "no" to the question in the Form 301 application whether he had an interest in an application in any proceeding which left an unresolved character issue against the applicant. (*See* WoodsCom Form 301 at 4 filed September 4, 1987.) Woods' credibility is materially flawed by his inconsistencies in testifying and in his erroneous reporting on Form 301.

Pears Broadcasting, Inc.

32. PBI is incorporated under the laws of Louisiana. (PBI Exh. 1.) PBI has two principals: Thomas G. Pears ("Pears") is President, Treasurer, and a Director; Tom D. Gay ("Gay") is Secretary and a Director. (PBI Exh. 1. Attachment 3.) Pears owns 8,000 (80%) shares of the applicant's common stock and Gay holds 2,000 (20%) shares. All 10,000 shares are voting stock. (PBI Exh. 1, Attachment 3.)

33. PBI plans to integrate both of its principals into the day-to-day management of the proposed station. Pears will serve as general manager and Gay will become station manager. PBI seeks enhancement for the broadcast experience of Messrs. Pears and Gay (combined 66 years), for Gay's local residence and involvement in civic activities, and for Pears' pledge to relocate to Columbia.

34. If PBI's application is granted, Pears plans to terminate all other broadcast interests and employment, move to Columbia, Louisiana, and become general manager of Channel 11. (PBI Exh. 1.) His current employment will thus not interfere with his managerial role at proposed Channel 11. Pears plans to devote 40-50 hours a week on a day-to-day basis to his duties at the station. (Pears, Tr. 454.) As general manager, he will be responsible for the supervision of all station operations. He will have ultimate supervisory authority over all station departments. Pears will be involved in the development and implementation of all station policies and practices. (PBI Exh. 1.)

35. Pears will retain only one other professional position which will make a demand on his time: He is a Director of the First National Bank of Lafayette, Louisiana, a position which requires that he attend one three-hour board meeting in Lafayette each month. That obligation is in addition to his 40 hour work week at the station but it will not materially interfere with his managerial position at Channel 11. Pears has testified at the hearing

that he would resign from that position in the event that it later interferes with his duties as general manager. (Pears, Tr. 454.)

36. Pears began his work in broadcasting in 1947 when he joined station KVOL(AM), Lafayette, Louisiana, as an announcer. (PBI Exh. 1.) He advanced to sales manager in 1951 and later became station manager before leaving that station in 1963. In that year, he became sales manager at Station KLFY-TV in Lafayette. In 1964, he was promoted to station manager at KLFY-TV and then in 1965, to general manager, a position he held until May 1988. At the same time he became general manager of KLFY-TV, he was elected Vice President and a Director of Texoma Broadcasters, Inc., licensee of KLFY-TV. (*Id.*)

37. In May 1988, Texoma sold Station KLFY-TV and Pears resigned as general manager. He holds no current interest in KLFY-TV, and his relationship with Texoma has concluded. (PBI Exh. 1.) In July 1988, Pears was elected President of KWTX Broadcasting Company, the licensee of KWTX-TV, KWTX(AM), and KWTX-FM in Waco, Texas. He holds this position today. As President, Pears is now responsible for all operations of the company's television and radio stations. (*Id.*)

38. Pears was the orginator in prosecuting PBI's application for the Columbia facility. (PBI Exh. 1.) He visited Columbia in October, 1987, prior to filing the initial application as a sole proprietor. (Pears, Tr. 427.) There he met Gay and asked him to help find a tower site. (Pears, Tr. 428.) Pears also sought insights from Mr. Gay in learning about Columbia. (*Id.*) During subsequent conversations, Pears and Gay decided to form the current applicant and to pursue the construction permit together. (Pears, Tr. 429-30; Gay, Tr. 524.) The sole proprietor application was amended on December 21, 1987, to reflect formation of the corporate applicant, PBI.

39. At the "B" cut-off date, Pears was a resident of Lafayette, Louisiana. (PBI's FCC Form 301, p. 3). His parents and children still live in Louisiana, and these family ties are important to him, although Pears currently resides in Waco, Texas. (Pears, Tr. 448-49.) Nonetheless, he has pledged to relocate to Columbia, Louisiana in the event the application of Pears Broadcasting is granted. (PBI Exh. 1.)

40. Mr. Gay has lived within the city grade contour of PBI's proposed station for the past eleven years. (PBI Exh. 2.) As station manager, Gay will supervise station operations including the station's sales, programming, and production departments. He will be involved in the development and implementation of all station policies and he will serve as acting general manager during any absence of Pears. (PBI Exh. 2.)

41. Gay has pledged to divest his ownership interests and to terminate all other relationships with the ten radio stations he owns prior to the commencement of PBI's operations in Columbia so that he can devote all his working time to Channel 11. (*Id.*)

42. Gay has owned a mini-storage business in Columbia since 1983 which he intends to retain. The business is located next to Station KCTO's studios. Management of the business requires only 1-2 hours a week of his time, an enterprise that will not interfere with his duties at Channel 11. (*Id.* ; Gay, Tr. 490-91.)

43. Columbia, Louisiana is a town of approximately 700 residents. It is located in Caldwell Parish, Louisiana. (PBI Exh. 2.) Gay moved to Columbia in 1978. He has resided within the city limits for about four years. In 1982, he moved outside the city but he remained in Caldwell Parish. He currently lives just a few miles from the Columbia city limits and his post office address is in Columbia. (PBI Exh. 2.) All of Gay's residences in or near Columbia for the past 11 years have been within the city grade contour of PBI's proposed facility. (*Id.*)

44. Gay is familiar with Columbia and the Channel 11 service area. (PBI Exh. 2.) Since moving to Caldwell Parish he has been elected to serve in the local government. He has also been actively involved in local clubs and service organizations. His civic involvement has included the following endeavors, all of which are located within Columbia or within the proposed service area of the applicant's proposed station:

Columbia Town Council	1980-1982
Chmn., Caldwell Parish American Red Cross	1983
Bd. of Dirs. & Exec. Comm., Caldwell Parish Council on Aging	1987-present
Dir., Twin City Ballet Company	1988-present
Caldwell Parish Industrial Development Board	1984-present
Columbia Lions Club	1978-present

(PBI Exh. 2; Gay, Tr. 492-94, 496-500.) Gay is a member of the Columbia United Methodist Church, the Church's Administrative Board, and Caldwell Parish Ducks Unlimited, a conservation group. (PBI Exh. 2; Gay, Tr. 495-496, 499.) Gay also is a member of the LaSalle Parish Chamber of Commerce and the Natchez-Adams Chamber of Commerce, both of which serve communities within PBI's Grade B contour. (PBI Exh. 2; Gay, Tr. 500-01.) As Station Manager of proposed Channel 11, Gay will continue his involvement in civic activities in Columbia. (PBI Exh. 2.)

45. Gay has 24 years of broadcast experience, 16 years in management. (*Id.*) He was enrolled in the Radio and Television Management program at Northeast Louisiana University in Monroe for two years. Since 1965, he has been continuously employed in broadcasting. (*Id.*) Gay began as an announcer at Station KRIH(AM), Rayville, Louisiana, in September 1965. The following January, he moved to Station KUZN(AM), Monroe, Louisiana, where he served as announcer and as program director for the next three years (1966-1969). From January 1969 to December 1972, Gay was an announcer with WNOE AM/FM in New Orleans. He returned to KUZN(AM) as a part-time announcer from December 1972 to September 1973. (*Id.*)

46. Gay became Operations Manager of KMLB AM/FM in Monroe in September 1973, in which position he was responsible for all aspects of station operations, except sales and bookkeeping. He held this position for three years. (*Id.*) In October 1976, Gay became a part owner and General Manager of KCTO(AM) in Columbia. (*Id.*) KCTO-FM was built and put on the air in 1980 (Gay, Tr.

474-75). From 1977 to 1980, Mr. Gay was part owner of KLTL(AM) and KLTL-FM in Lake Providence, Louisiana. (Gay, Tr. 475.)

47. In January 1981, Mr. Gay became the sole owner and General Manager of KCTO(AM) and KCTO-FM. He has operated and managed these stations from that time to the present. (PBI, Exh. 2.) Since July 1985, Gay has been owner and General Manager of Stations KFNV(AM) and KFNV-FM in Ferriday, Louisiana. (*Id.*) Since December 1986, he has been owner and General Manager of Stations KJNA(AM) and KJNA-FM in Jena, Louisiana. (*Id.*) Since October 1988, Mr. Gay has been owner and General Manager of Stations KAPB(AM) and KAPB-FM in Marksville, Louisiana. (*Id.*) Since November 1989, he has been owner and General Manager of Stations KMAR(AM and KMAR-FM in Winnsboro, Louisiana. (*Id.*)

48. Mr. Gay has been active in prosecuting PBI's application for the Channel 11 facility. (PBI, Exh. 2.) He has assisted Mr. Pears in locating a tower site, in preparing an EEO program, and in assuming the responsibility for maintaining PBI's public inspection file. (Woods Exh. 6.) Mr. Gay has contributed 20% of the applicant's costs and he maintains PBI's checkbook and pays the bills. (*Id.*)

Giles Television, Inc.

49. Giles TV is a Delaware corporation that is authorized to conduct business in Louisiana. Its President, Secretary, Treasurer and sole Director is Jimmie V. Giles ("Giles"). Mr. Giles also owns 100% of the voting stock and 40% of the equity of the corporation. The remaining 60% of the equity is owned by Love Television Partnership ("Love"), a former applicant in this case that merged with Mr. Giles to form Giles TV during the course of this litigation.[7] *See Memorandum Opinion and Order*, FCC 89M-2081, released August 16, 1989. Love would receive a voting interest in the merged entity up to 49% only if there were to be a universal settlement in this case. (Giles, Tr. 774; Hash, Tr. 869.)

50. There is evidence in the record that Mr. Giles learned of the opportunity for Channel 11 from a broadcaster in Tampa, Florida named Wheeler. (Giles, Tr. 576-77.) Wheeler put Giles in touch with communications counsel and an engineer. Then, Wheeler had no more input. It was through the efforts of counsel, on Giles' instruction, that efforts and contacts were made to secure a tower site. (Giles, Tr. 590-93.) But counsel, not Giles, found the information required for the EEO portion of Form 301. (Giles, Tr. 736-738.) Counsel even filed an engineering amendment for a new site in December, 1987 of which Giles had no recollection. (Giles, Tr. 593-95.) The evidence establishes that Mr. Giles relied on counsel for preparing his application and in securing a transmitter site.

51. The totality of the evidence establishes that while he relied heavily on counsel to prepare and update his application,[8] Mr. Giles made arrangements for newspaper publication, for obtaining counsel and for obtaining an engineer. He directed counsel to locate a site and he set up a public inspection file in Columbia. (Giles TV Exh. 1; Giles, Tr. 592.) Giles also personally arranged for the financing. (Giles, Tr. 809.) The evidence also shows that since the merger, Mr. Giles has had contacts with Love that were in connection with effecting calls for capital contributions. (Giles TV, Exh. 1.) Status reports to Love of the case's progress are made through counsel. (Giles, Tr. 873.)

52. The evidence also is clear that Mr. Giles was interested in pursuing a settlement of this case. Towards that end, the merger agreement with Love contemplated that Love would pay 100% of the settlement costs to secure the license. (Caldwell Exh. 10.) Mr. Giles would control 51% of the voting power; Love would have the remaining 41%. The 40/60 equity split in Love's favor would remain unchanged. (*Id.*) The current structure of Giles TV, giving Mr. Giles 100% of the voting power, was implemented in a second agreement between Giles and Love after universal settlement efforts had failed. (Caldwell Exh. 10 at 2-3.) That later agreement left Mr. Giles, who qualifies for a racial preference, with 100% of the voting power, which would revert to 51% if a settlement were achieved. (*Id.* at 6.) Giles and Love wanted to assure that Giles TV received full integration credit if there were no settlement and that is the sole reason that Giles now owns 100% of the voting power. (Giles, Tr. 774; Hash, Tr. 862-63.)

53. There is direct evidence in the record of control being ceded to Love under the merger. Love assumed most of the liability for legal fees and provision was made for Love to pay Giles a salary in the form of loans, commencing in February 1990. But if the enterprises is not successful, Giles need not repay the loans. While the agreement reflects an "understanding" that Love has no voice in management, there are no specific restrictions dictated by the agreement. And there is no explicit provision in the agreement to prevent Love from giving voluntary advice to Giles or that precludes Giles from taking such advice. (Caldwell Exh. 10; Giles, Tr. 777-78.) Love expected to receive a full accounting of the legal services before paying for the fees. (Giles TV Exh. 4, Att. 1 and Att. 2.) Mr. Giles ultimately provided the unredacted bills. (Giles, Tr. 785-86.) And an amendment to the corporate by-laws was reviewed by Love before being adopted that assured that voting and non-voting shareholders would have equal voting rights in their respective classes. (Giles, Tr. 788.)

54. Giles proposes to work full-time (not less than 40 hours per week) as the station's general manager. At the time he testified, Mr. Giles was employed as a professional football player in the National Football League where he has worked for the past 13 years. At the time of his testimony (January 23, 1990), he did not expect to return to football, although his playing status at that time was undetermined. (Giles, Tr. 811.) Mr. Giles relies on his pledge under oath that he will terminate all other employment in order to effectuate the proposal of Giles TV. (Giles TV, Exh. 1.)[9]

55. Mr. Giles qualifies for a preference by virtue of his race, Afro-American. In 1977, he graduated from Alcorn State University with a degree in Business Administration. He currently resides in Tampa, Florida. While he pledges to move to Columbia if his company wins, he only saw Columbia while driving through. (Giles, Tr. 582.) Mr. Giles clearly has no ties with or significant knowledge of the Columbia community.[10]

56. Mr. Giles was employed during the 1988 off-season as Coordinator of Special Projects (marketing and sales) for Station WTVT(TV) in Tampa, a paid position that Giles sought and obtained. (Giles TV Exh. 2; Giles, Tr. 561-62.) His was a non-management position, primarily as a trainee where he assisted in promotions and sales. (Giles

TV, Exh. 2; Giles, Tr. 829.) While Mr. Giles attended management meetings as a trainee-observer, the only evidence showing that he participated in management level decisions was in connection with a Strawberry Festival. (Giles TV, Exh. 2.)

Caldwell Broadcasting Limited Partnership

57. Caldwell is organized as a limited partnership under the laws of the State of Louisiana. The sole general partner is Caldwell Communications Corporation ("CCC"), a corporation that is organized under the laws of the State of Louisiana. CCC holds 100% of the voting power and 20% of the equity in the limited partnership. CCC has been authorized to issue up to 1,000,000 shares of a single class of no par common stock. Thus far, only 30,000 shares have been issued. Those shares were issued in the following manner: 14,700 shares to Betty J. Robinson, 7,800 shares to Mary Lou Winters, and 7,500 shares to Clarice Kenney. At the present time, Betty J. Robinson holds 49% of the voting stock and equity of the corporation, Mary Lou Winters holds 25%, and Clarice Kenney holds 25%. (Caldwell Exh. 1.)[11] CCC's officers and directors are: Mary Lou Winters, President and Director; Clarice Kenney, Secretary/Treasurer and Director; and Betty J. Robinson, Vice President and Director. (Caldwell Exh. 1.) Mrs. Robinson was originally proposed as Secretary and Treasurer, but that proposal was changed to permit Mrs. Kenney to serve in that position (Winters, Tr. at 1094, Robinson, 1163.)

58. There is evidence in the record raising substantial question about Mrs. Robinson's role as an officer that negates her ever having any control in CCC's business. The business of CCC is conducted by an informal "executive board" consisting of Mrs. Winters and Mrs. Kenney. Mrs. Robinson does not participate in their meetings even though she is the Vice-President and a Director of CCC. (Robinson, Tr. 1163.) Mrs. Robinson is not advised of all meetings and she does not attend all meetings. (*Id.*) Mrs. Winters and Mrs. Kenney have made decisions and then notified Mrs. Robinson subsequently. (Kenney, Tr. at 1280.) Mrs. Kenney advises her of meetings which she needs to attend and Mrs. Winters informs her of important developments. (Robinson, Tr. at 1163, 1165.) Mrs. Winters testified that Mrs. Robinson had been given 49% of the stock in order to maximize a preference:

> In order to take advantage of the FCC's preference for women and minorities, we chose to give Betty [Robinson] 49 percent - - -.

(Winters, Tr. 1095.) There also is no evidence that Mrs. Robinson intends to resign her full-time teaching position should Caldwell receive a grant.

59. There is additional evidence in the record on the *bona fides* of Mrs. Robinson's participation. Although formerly treasurer, her name does not appear on the bank's signature card. (Winters, Tr. 1095.) Mrs. Winters recommended Mrs. Robinson to the group to take advantage of her racial preference as an Afro American female. (Winters, Tr. 923.) Mrs. Robinson's name was listed as lead petitioner on Comments to the FCC seeking Columbia's allocation. But she never saw any drafts and she only saw the pleading after it was filed. (Robinson, Tr. 1147-48.) A later supplement was filed that she never saw. (Robinson, Tr. 1148; Giles TV Exh. 13 and Exh. 14.) This evidence establishes that Mrs. Robinson was asked to participate in order to gain the preference. She has not exercised or shared in any decisional control. Nor was she asked to exercise or share in control. And she has not even exercised the office of Vice President or Director in any significant corporate matter.

60. There also is substantial evidence in the record showing that Mrs. Robinson has become financially beholden to Mrs. Winters and Mrs. Kenney. While admittedly responsible for 49% of the general partner's financial obligation (Tr. 1168), Mrs. Robinson has been relying on loans from Mrs. Winters and Mrs. Kenney to meet capital calls and admits that without such assistance she could not meet these calls. (Robinson, Tr. 1171, 1187-88.) Her voting stock stands as collateral for those loans and she understands that she loses the stock if she cannot pay off the loans. (Robinson, Tr. 1181-82.) Corresponding notes must be repaid within one year of their making, and Mrs. Robinson was making payments of $400 per month, apparently from her teacher's salary. The capital call loans totalled as follows:

$ 3,900	-	Initial Loan
2,000	-	March 16, 1988
4,900	-	June 1, 1988
4,900	-	January 1, 1989
$15,700		Total

(Giles TV Exhs. 19-24; Robinson, Tr. 1189-92.)

61. This adverse financial condition is significant because under the partnership agreement, the limited partners may remove any officer or director of the corporate general partner who becomes subject to bankruptcy proceedings. (Giles TV Exh. 16.) This financial structure also is very important because under the partnership agreement, it is only after the partners attempt to raise needed money through capital calls that funds may be borrowed. (*Id.*) Thus, Mrs. Robinson must be (or should be) concerned about becoming subject to a bankruptcy proceeding and removed from office as a result. She therefore is unreasonably beholden to Mrs. Winters and Mrs. Kenney for lending her monies for capital calls which must be met in 30 days, and to the limited partners for foregoing possible foreclosure procedures.

62. Mrs. Robinson was also shown to lack control over her own inputs to the application. She was involved in name only during the time the Columbia allocation was being sought. (Robinson, Tr. 1144-45.) Mrs. Winters, not Mrs. Robinson, signed the limited partnership agreement for the general partner. (Robinson, Tr. 1197.) Mrs. Winters assisted Mrs. Robinson in the latter's preparation of cost estimates. (Robinson, Tr. 1206, 1208-09.) While Mrs. Robinson initially claimed credit for the EEO disclosure, on cross examination she admitted that Mrs. Winters participated in its preparation. (Robinson, Tr. 1210.) She also sought to convince the fact-finder that she was responsible for coordinating with the engineer and checking out the tower site. But the evidence disclosed that she only spoke once with the engineer. (Robinson, Tr. 1206-07, 1211-12.) And her site visit was only "just to see it" after it had been obtained. (Robinson, Tr. 1210.)

63. Mrs. Kenney took a major role in preparing and prosecuting the application. She formulated a program statement, placed the notice in a local newspaper, circulated a questionnaire on media interests to the partners, and assisted Mrs. Winters in obtaining a bank commitment. (Kenney, Tr. 1285.) Mrs. Winters played a similarly significant role in the application process. As indicated above, she signed the partnership agreement on behalf of the corporate general partners. (Winters, Tr. 1052-53.) She contacted a site owner, prepared cost estimates, acted as primary contact with legal counsel, and was involved with securing financing. (Winters, Tr. 1017-19; 1096-97; 1114.)

64. Caldwell proposes to integrate its three officers, directors, and the stockholders of its corporate general partner into the management of its proposed facility. Mrs. Winters would work full time (at least 40 hours per week) as General Manager. Mrs. Kenney would work full-time as Program Director. Mrs. Robinson would work full-time in dual roles as Director of Public Service Broadcasting and as Director of Community Affairs. (Caldwell Exh. 1.)

Mrs. Winters

65. In the event Caldwell is the winner, Mrs. Winters will quit her full-time position as business manager for her husband's medical practice to work full-time as Channel 11's General Manager. (Caldwell Exh. 3.) But she does not propose to terminate her positions as the Secretary of Management Consultants of Caldwell Memorial Hospital, and as the Secretary of Delta Medical Corporation. (*Id.)* She proposes to direct the overall operation of the station, maintaining primary responsibility for all decisions affecting daily an long-range operations. (*Id.*) She will hire department heads and oversee the hiring of key personnel. She proposes to implement station policies concerning programming, sales, finance, and administration. All management level personnel will report directly to her. (Caldwell Exh. 3.)

66. Mrs. Winters has resided in the city grade contour of Caldwell's proposed station since 1960 and she will continue to reside there if Caldwell wins. Since 1968, Mrs. Winters has been Chairperson of the Columbia/Caldwell Parish Capital Fund Drive for Northeast Louisiana Public Radio, which involved attending Board meetings and soliciting contributions. Since 1960, she has been a member of Ouachita Parish Medical Auxiliary and the American Academy of Family Practice Auxiliary, and she has participated in the public health campaigns conducted by both organizations. (Caldwell Exh. 3.)

67. From 1972 to 1980, 1983 to 1987, and 1988 to the present Mrs. Winters served as member of the Democratic State Central Committee of the Louisiana Democratic Party representing District 20, which includes Caldwell Parish. From 1972 to 1980, Mrs. Winters served on the Democratic National Committee as Louisiana's Democratic National Committeewoman, a position elected by the Louisiana Democratic State Central Committee. (Caldwell Exh. 3.) She has been a Delegate to each Democratic National Convention since 1964 representing the 5th Congressional District, which includes Caldwell Parish. From 1965 to 1975, she served as Vice President of the Louisiana Art and Folk Festival responsible for putting on an annual art and folk festival, an official State festival which is held in Caldwell Parish. (Caldwell Exh. 3.) From 1980-83, Mrs. Winters was a member of the River Oaks School Board, a private elementary and secondary school in Monroe, LA, and she is a member of the Columbia Methodist Church. (*Id.*)

68. Mrs. Winters also seeks credit for other civic activities which appear to be outside Caldwell's proposed services area. (*See* Caldwell's PFC at Paras. 125-131; 133-134; 136-137.) Such civic activities do not qualify for a comparative enhancement credit in this case.

Mrs. Robinson

69. Mrs. Robinson represents that she will work a minimum of 40 hours per week on a day-to-day basis as Director of Public Service Broadcasting and as Director of Community Affairs. (Caldwell Exh. 4, Robinson, Tr. 1222-23.) But Mrs. Robinson has made no commitment in an integration statement or in her testimony to resign her full-time teaching position. As Director of Public Service Broadcasting and of Community Affairs, Mrs. Robinson will need to devise the station's overall public affairs policy, overseeing the development and production of public affairs programming and public service announcements. Mrs. Robinson also will supervise ascertainment of the needs and interests of viewers, direct public service and educational campaigns, and act as liaison to community organizations. (Caldwell Exh. 4; Robinson, Tr. 1223.) She also will be required to implement and administer the station's EEO Program. (Caldwell Exh. 4, P. 1.)

70. Mrs. Robinson has resided within the city limits of Columbia, Louisiana, which is within the city grade contour of Caldwell's proposed station, from 1963 to the present. She will continue to reside in Columbia in the event Caldwell's application is granted. (Caldwell Exh. 4.)

71. From February 1986 until the present, Mrs. Robinson has been engaged as an unpaid area talent coordinator of the "Ernie Miles Show", which is broadcast weekly on KNOE-TV, Channel 8, Monroe, Louisiana. Her duties involve identifying local talent for the program. (Caldwell Exh. 4; Robinson, Tr. 1132-34.) She attends the program and schedules groups to appear on the program. (Caldwell Exh. 4; Robinson, Tr. 1133-34.) Since 1984, Mrs. Robinson has been a member of the Coalition of Leaders to Success for Caldwell Parish, a civic organization that assists individuals with scholarships and other financial assistance. Since 1983, she has been a member of the Art and Folk Festival Committee of the Brownville Baptist Church near Columbia and since 1948 she has been a member of the Brownville Baptist Church and has served on various committees and projects that assist the community's sick and elderly. (*Id.*)

72. Other community civic-oriented activities of Mrs. Robinson include membership in the Bayou Beouf Organization, membership on the Columbia Elementary Parent Teachers Organization since 1980, Director of the Columbia Community Youth Choir since 1984, involvement in local anti-drug movements through the school system, and President of the Caldwell Association of Educators since 1985. (Caldwell Exh. 4.)

Mrs. Kenney

73. Mrs. Kenney will work full-time as Program Director formulating the station's program policy and implementing the station's program schedule. She will supervise production staff and facilities, purchase programming, monitor compliance with program contracts,

and develop and implement the budget for the programming department. Mrs. Kenney has resided in Columbia or Caldwell Parish since 1959. She will continue to reside within the city grade contour if Caldwell is declared the winner. (*Id.*)

74. Mrs. Kenney receives credit for her local civic involvement. She has chaired the Farm Bureau Women's Committee at Caldwell since 1982 and she has been active in that organization for 20 years. And for 15 years, Mrs. Kenney has been a member of the Caldwell Parish Recreation Board of the Caldwell Police Force, which is the governing body of Caldwell Parish. Since 1986, she has been President of the Northeast Louisiana District School Supervisors Association addressing school issues in 19 parishes that are within the service contour. Since 1987, she has assisted on projects for the Caldwell Lioness Club. Since 1978, Ms. Kenney has served as Secretary of the Mt. Pleasant Cemetery Board in Columbia. She has served as Chairman of the Arts in Education Committee for the Louisiana Art and Folk Festival. Since 1984, she has represented Caldwell Parish on the State Textbook and Media Advisory Council of the Louisiana Board of Elementary and Secondary Education. She also represents Caldwell Parish on the Private Industry Council for Louisiana. (Caldwell Exh. 5, pp. 3-5.)

KTVE, Inc.

75. KTVE is a corporation organized under the laws of the State of Arkansas. The corporation was chartered on August 26, 1965. Its articles of incorporation authorize 500,000 shares of common (voting) stock with a par value of one dollar ($1.00) per share. At the present time, all 500,000 shares have been issued and are held by the parent corporation, Gray Communications Systems, Inc. ("Gray"). (KTVE Exh. 1.)

76. Gray is a corporation organized under the laws of the State of Georgia. It was originally chartered in 1897 as the Herald Publishing Company. The twenty-year charter was renewed for additional twenty-year periods on January 25, 1917, and on April 20, 1937. The charter was amended on February 26, 1940, and on July 28, 1952. The charter was revived on April 15, 1959, for a period of thirty-five years and on June 15, 1967, the charter was amended again to change the name of the corporation from the Herald Publishing Company to Gray Communications Systems, Inc. The amendment increased the number of shares to one million (1,000,000) shares of common (voting) stock with a par value of one dollar ($1.00) per share. To date, 491,005 shares of common stock have been issued. (KTVE Exh. 1.)

77. The shareholders who own or vote more than 5% of the outstanding common stock of Gray are as follows: Terry P. McKenna, Executor for the Estate of James H. Gray, Sr., votes 253,800 shares of common stock (51.7%); Sandler Associates, a New York Limited Partnership, owns and votes 56,012 shares of common stock (11.4%); and the Prudential Insurance Company of America owns and votes 28,000 shares of common stock (5.7%). (KTVE Exh. 1.) The following individuals are officers and/or directors of Gray and KTVE, with the exception of George Singleton, who is an officer only of KTVE:

Name	Position
Marcia Crowe	Assistant Secretary
Geoffrey L. Gray	Vice President/Director
James H. Gray, Jr.	President/Director
Constance G. Greene	Secretary/Director
Phillip R. Greene	Vice President
Herbert P. Haley	Director
Barbara C. Jones	Treasurer
Terry P. McKenna	Chairman of the Board/Director
Hugh Norton	Director
Dixon Oxford	Director
John Patronis	Director
John E. Reed	Director
Neal H. Ray	Director
Barry W. Turk	Controller
George Singleton	Vice President (KTVE, Inc.)

(KTVE Exh. 1.)

78. KTVE seeks Channel 11 because it presents a means to maximize coverage. Now, KTVE owns TV Channel 10 at El Dorado, Arkansas which KTVE calculates serves 49% of the population it proposes to serve with Channel 11. But that conclusion is not shared by other applicants. (*See* WoodsCom's PFC at 40.) WoodsCom raises the inference that KTVE seeks to block the other applicants from obtaining Channel 11 so that KTVE can protect its broadcast property at Channel 10 from the anticipated competition. But these are merely arguments advanced. There is not substantial evidence to show that KTVE has embarked on a predatory scheme to file a strike application, and there will be no such inference found. For whatever the business reason, the KTVE directors decided to file for Channel 11 and to divest Channel 10 if it is successful. (McKenna Tr. 1412-13.)[12]

79. No integration credit is claimed for KTVE based on ownership of the stock of KTVE or its parent company, Gray. (KTVE Exh. 2.) Nonetheless, the same management personnel who have managed and operated KTVE(TV), El Dorado, Arkansas, now owned by KTVE, will manage and operate the proposed station, except for routine personnel changes. (KTVE Exh. 2.) KTVE's threshold showing to expand the comparative issue to allow evidence of good past broadcast record was denied in an earlier ruling. *Memorandum Opinion and Order*, FCC 89M-401, released February 8, 1989. And since no integration is proposed there is no reason to consider broadcast experience of the applicant.

CONCLUSIONS OF LAW

80. Section 307(b) of the Communications Act of 1934, as amended, (the Act) requires the "fair, efficient and equitable distribution" of broadcast service. Therefore, an assessment of the evidence must be made under the applicable Commission standard in determining which applicants meet the statutory standard. *See Policy Statement On Comparative Broadcast Hearings*, 1 F.C.C. 2d 393 (1965).

81. The primary concerns under the Act are: (1) maximum diffusion of control of the media of mass communications, or diversification, and (2) best practicable service to the public. *West Michigan Broadcasting Co.* v. *F.C.C.*, 735 F.2d 601, 603-607 (D.C. Cir. 1984) (process of

comparative evaluation). Thus, comparative credit will be awarded to basically qualified applicants which are without other media interests. The "best practicable service" standard includes the integration of ownership into management which may be enhanced by local residence, civic activities, broadcast experience and, if applicable, minority and female gender preferences. *Id.* There are no specified basic qualifying issues to consider, but the *bona fides* of integration proposals have been challenged and will be considered. *See e.g. N. E. O. Broadcasting Company*, 103 F.C.C. 2d 1031, 1035 (Review Bd 1986) (non-owner spouse found to control 100% of proposed owner in all decisions and therefore applicant not credited with integration). Also, there are issues of diversification to consider.

Comparative Coverage

82. The highest comparative coverage preference generally is awarded to the applicant proposing to provide a first or second service. *Christian Broadcasting of the Midlands, Inc.*, 99 F.C.C. 2d 578, 582-83 (Review Bd 1984). But in this case, there are at least two services in the uncommon area that is proposed to be served and therefore, no such preference will be awarded.

83. Each of the applicants plans to provide a third service and a fourth service. The differences between the applicants range from about 4% to approximately 80%. But when compared to the total populations involved, the statistical differences are comparatively neutral. For example, KTVE's proposal shows the highest percentages of more third and fourth services but in all cases the coverage is less than 1% of the total population. (*See* Bureau's PFC at 5-6.)

84. It has been held that a third and fourth service superiority which constitutes less than 2% of the total population would be a "miniscule" comparative factor. *See Louisiana Super Communications Ltd. Partnership*, 102 F.C.C. 2d 1293, 1308 (Review Bd 1985). While the Review Board had awarded a slight preference, that coverage credit was based, in part, on a 9.6% overall coverage advantage. *Compare Caldwell Broadcasting Corp.*, 100 F.C.C. 2d 115, 128 (Review Bd 1985) (very slight preference for small fourth service combined with an 8% overall population advantage). Here, in this case, the differences in total population to be served are just as *de minimis* as the third and fourth service superiority, differences ranging between a mere .3% and 3.2%. In addition, while WoodsCom, is the applicant that has been shown as having the overall advantage, it is KTVE that finishes first in its service to underserved areas. Accordingly, because of the *de minimis* differences noted, no comparative coverage preference is warranted to any of the applicants.

Diversification

85. Maximum diffusion of control of the media of mass communication is a factor of primary significance in the comparative adjudicative process. *See Policy Statement, supra.*

86. WoodsCom receives a substantial comparative diversification demerit because of the vast broadcast holdings of its controlling principal, Mr. Charles Woods. *See* Para. 10, *supra*. Through the non-divested interest of Mr. Thomas G. Peers in Brazos Broadcasting Company (Paras. 18-19 *supra),* PBI is charged also with a diversification demerit that is *de minimis* and will make no comparative difference. Giles TV receives a vicarious diversification demerit through the attributable broadcast interests of its limited partner. Neither Caldwell nor KTVE is charged with a diversification demerit.

Integration Proposals

87. KTVE proposes no integration and therefore it will not be considered on a comparative basis. WoodsCom will receive no integration credit because Mr. Woods failed to make a permanent commitment to actively participate in its day-to-day management. *See Policy Statement, supra* at 395 n. 6. *See also Grand Broadcasting Co.*, 36 F.C.C. 2d 925, 931 (Comm'n 1964) (integration contemplates day-to-day participation by owner) and *Martin Intermart, Inc.*, 3 F.C.C. Rcd 1650, 1652 (Review Bd 1988) (no integration credit awarded to non-permanent integration proposals).[13] WoodsCom had the burden of proof to establish how it would effectuate management through Mr. Woods in view of his other business interests. *Cuban-American Ltd.*, Comm'n *Slip Op.* FCC 90-223, released June 22, 1990.

88. PBI will qualify for 100% integration through Mr. Pears and Mr. Gay. Their combined broadcast experience merits a substantial credit and Mr. Gay's local residence merits an additional credit. The diversification demerit through Mr. Pears' position with Station KWJZ and his derivative interest in Brozo Broadcasting is *de minimis* and does not preclude PBI from being declared the comparative winner. Giles TV is partially controlled by the limited partner Love and Love's passivity has been negated. (*See* Para. 53, *supra.*) Love is advancing money to Mr. Giles that he may not need to repay, Love pays approved legal fees, there is no prohibition against Love's voluntary advice being taken by Mr. Giles, and Love has participated in adopting a structural amendment to a corporate by-law. Therefore, Giles TV will receive only 40% credit for Mr. Giles' integration. Giles TV also is charged with Love's media interests and receives a diversification demerit. As for Caldwell, since Mrs. Robinson will not qualify for integration at all because she is not shown to have been independently involved in the prosecution of the Caldwell application and since her integration proposal is found to be a sham, Caldwell will receive no integration credit. Thus, PBI is declared the winner without the need for comparative analysis since only PBI has achieved 100% integration without any offsetting diversification demerit. *Signal Ministries, Inc.*, 104 F.C.C. 2d 1481, 1497-98 (Review Bd 1986). *See also New Continental Broadcasting Co.*, 88 F.C.C. 2d 830, 856 (Review Bd 1981). *Compare Metro Broadcasting, Inc.*, 2 F.C.C. Rcd 1474 (Comm'n 1987).

89. There has been consideration to the arguments advanced for charging PBI with a diversification demerit. On July 12, 1988, Mr. Pears became President and a Director of KWTX-TV, KWTX-FM and KWTX(AM) in Waco, Texas. That acquisition and a promise to divest were timely reported by PBI. (Giles TV Exh. 6.) Thereafter, by virtue of his position with KWTX Broadcasting, on December 22, 1988, Mr. Pears became President and a Director of a satellite enterprise, Brazos Broadcasting Company, licensee of KBTX-TV in Bryan, Texas. (Pears, Tr. 481; Giles Exh. 7.) But Mr. Pears did not formally propose to divest himself of his positions with Brazos Broadcasting Company and his directorship in KWTX Broadcasting Company until December 28, 1989, over a year later. (Giles TV Exh. 7.) And Mr. Pears admitted on-the-record that he had failed to timely notify the Commission of his directorship in KWTX or Brazos Broadcasting. (Pears, Tr. 439-42, 462.) The divestment commitment was made more than one year after acquisition. (Giles TV Exh. 7.) The Commission requires that the divestiture pledge must accompany a Post "B" acquisition. *J. T. Parkes Broadcasting Corp.*, 5 F.C.C. Rcd 4651 (Comm'n 1990). *See also Women's Broadcasting Coalition, Inc.*, 59 Radio Reg. 2d (P&F) 730, 734 n. 18 (Comm'n 1986). But no decisionally significant diversification demerit should be imposed because although admittedly late, the positions as president and director of Brazos Broadcasting was a managerial position that was less than ownership and therefore should be excused. *Compare Talleyrand Broadcasting*, 103 F.C.C. 2d 476, 478 n. 2 (Review Bd 1985) (no demerit for failure to timely pledge divesting position of chief engineer with managerial duties). The Commission's divestiture policy was met here. The fact that the reportable positions with Brazos and KWTX were gained through his position of President of KWTX Broadcasting is highly material. And there was reasonable assurance given that these positions would be timely divested. *See Policy Statement*, *supra* at 394 n. 5 (only significant managerial positions in stations within and without the service area will be considered).

90. As found above, Giles TV will receive only a 40% integration credit. Mr. Giles did very little himself to prosecute the Giles TV application, relying mainly on counsel and an engineer. When he merged with Love, an experienced broadcaster, Love picked up payments for legal costs and paid Mr. Giles a salary which makes him obligated and answerable to Love. Giles has also permitted a structure which does not preclude advice from Love and Love has been permitted a role in structuring voting rights. The Commission has held:

> [W]here an owner has assumed an active role after the applicant has declared that that owner will be passive, that owner's equity interest will be attributed to the applicant for integration purposes *regardless of the nature of the " passive " owner's involvement.* (Emphasis added.)

Coast TV, 5 F.C.C. Rcd 2751, 2753 (Comm'n 1990). Thus, the integrated principal, Mr. Giles, will only receive integration credit for his equity interest, i.e., 40%. The percentage is not sufficient to overcome PBI's 100% integration.

91. An unrealistic organizational structure may be evaluated in terms of denial of integration credit. *Signal Ministries, Inc.*, *supra* at 1494. Caldwell cannot be declared the winner because the evidence establishes that Mrs. Robinson's proposed integration is a sham proposal, intended only to gain the benefit of racial and gender preferences. Substantial evidence has been cited above regarding the make-believe roles assigned to Mrs. Robinson and her financial dependence on other principals. *See* Paras. 58-60, *supra*. It is patently unreasonable to find that Caldwell's principals ever expected Mrs. Robinson to meet her duties as officer, director and full-time Director of Public Services Broadcasting and Director of Community Affairs in view of her full-time teaching position and the extensive community groups with which she remains active and with which she intends to remain active. Thus, Caldwell has failed to meet its burden of proof with respect to Mrs. Robinson's integration. *Cuban-American Ltd*, 5 F.C.C. Rcd 3781 (Comm'n 1990). It is found to be a sham because the roles of Mrs. Robinson as an officer, director and integrated manager have been misrepresented to the Commission. *See Washoe Shoshone Broadcasting*, Comm'n *Slip Op.* 90-293, released September 17, 1990. *Compare Pepper Schultz*, 5 F.C.C. Rcd 3273 (Comm'n 1990) (applicant must formulate realistic staffing proposal). *See also Metroplex Communications, Inc.*, Comm'n *Slip Op.* FCC 90-294, released September 19, 1990 (sham found where authority was to be vested in a person without broadcast experience and without a true financial stake in the venture); and *Carta Corporation*, 5 F.C.C. Rcd 3696 (Review Bd 1990) (sham found from totality of record evidence).

Ultimate Conclusions

92. WoodsCom's integration is not credited and Mr. Woods' testimony on a claimed preference is not accepted. Giles TV receives only 40% integration credit for Mr. Giles. Caldwell's sham proposal for Mrs. Robinson receives no integration credit and disqualifies Caldwell from comparative consideration. KTVE, Inc. offers no integration. PBI receives 100% integration credit. Without need for further analysis, PBI is the clear winner.

93. Alternatively, if the applicants each received credit for 100% integration, KTVE would still finish last because KTVE proposes no integration. WoodsCom would finish fourth with or without giving any credit to Mr. Woods' proposed integration. He has considerable media holdings as well as broadcast experience. But he would not qualify for a local residence credit either in the community or in the service area. And he would receive no minority preference for his purported American Native Ancestry on the grounds that Mr. Woods' account lacks credibility. Giles TV would finish third. Mr. Giles would receive no credit for local residence, civic activities or past broadcast experience. Mr. Giles does receive a minority preference, but it would be offset by Mrs. Robinson's minority and gender preferences for Caldwell, and by Mr. Gay's local residence and civic activities for PBI. *See Radio Jonesboro, Inc.*, 100 F.C.C. 2d 941, 945 (Comm'n 1985). The gender preferences for Mrs. Kenney, Mrs. Winters and Mrs. Robinson and the 27 years local residency of Mrs. Robinson in the Columbia community would make Caldwell a close second. But PBI would again be declared the winner due to Mr. Gay's eleven years residence in the city grade contour, his civic involvements in Columbia and the service area, which were substantially equivalent to Mrs. Robinson's, Mr. Pears' pledge to move to Columbia and

most importantly, the combined past broadcast experience of Mr. Pears and Mr. Gay, *Ronald Sorenson*, 5 F.C.C. Rcd 3144 (Review Bd 1990).

ORDER

Accordingly, based on the foregoing, IT IS ORDERED that unless an appeal from this Decision is taken by a party, or unless the Commission reviews this Decision on its own motion,[14] the applications of Woods Communications Group, Inc. (File BPCT-870904KJ); Giles Television, Inc. (File No. BPCT-871109KF); Caldwell Broadcasting Limited Partnership (File No. BPCT-871110KL); and KTVE, Inc. (File No. BPCT-871110KL) ARE DENIED.

IT IS FURTHER ORDERED that the application of Pears Broadcasting, Inc. (File BPCT-871109KF) for authority to construct a new TV Station on Channel 11 at Columbia, Louisiana IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

FOOTNOTES

[1] There were initially ten mutually exclusive applications designated for hearing by *Hearing Designation Order* ("HDO") DA 88-543, released April 27, 1988. By *Order* FCC 88M-3905 released November 16, 1988, applicant Lanford Telecasting Co., Inc.'s Request for Dismissal was granted. Applicant William Wainwright's Request for Dismissal of Application was granted by *Order* FCC 88M-3882, released November 16, 1988. Applicants Love Television, Inc. and Jimmie V. Giles entered into a partial settlement agreement to create a new applicant, Giles Television, Inc. That partial settlement agreement was approved by *MO & O* FCC 89M-2081, released August 16, 1989. This case was reassigned to the undersigned presiding administrative law judge on August 17, 1989 for reasons of administrative scheduling. *See Order* FCC 89M-2097. Applicant William L. Cook, III filed a voluntary Motion to Dismiss that was granted by *Order* FCC 90M-97, released January 17, 1990 and the application of Columbia TV and Radio, Inc. was dismissed upon grant of its Motion to Dismiss by *Order* FCC 90M-104, released January 18, 1990.

[2] By Joint Stipulation received in evidence on February 13, 1990, the applicants agreed that the withdrawal of applicant William L. Cook, II, whose proposed Grade B contour defined the "common" service area of the applicants, did not skew the accuracy of the Joint Engineering Exhibits solely for the purpose of calculating the relative differences between the applicants with respect to their proposed service to underserved areas. (Joint Engineering Exh. 3). Thus, data in Joint Engineering Exhs. 1 and 2 were stipulated to be accurate to the extent that the data represents relative differences among the remaining five applicants with respect to measuring their proposed service to underserved areas. The stipulation was accepted by the Presiding Judge because it was reasonable and in order to avoid the time and expense of reconstructing the data in a new exhibit.

[3] Sandler's media holdings are substantial. Sandler owns 16.35% of Adelphi Communications Corp. which has extensive cable television systems in several states. Sandler also owns 7.94% of Cablevision Systems Corp. (cable, movies and sports), 5.84% of Century Communications Corp. (radio stations and multiple cable television systems), 4.42% of Multimedia, Inc. (radio and television stations), 3.25% of TCA Cable TV, Inc. (cable television systems in the Southwest), 1.9% of Jones Intercable, Inc. (multi cable television systems), 8.6% of Outlet Communications Corp., and 2.43% of Mercom, Inc. The three general partners of Sandler also own Sandler Capital Management which in turn owns and controls stock interests in the above entities. But there are no numerically controlled holdings that tie directly with KTVE and there is no other evidence of control by Sandler over KTVE.

[4] Woods retains the authority to increase salaries, hire personnel, select programming and make capital improvements. He is responsible for FCC compliance and overall supervision. (WoodsCom Exh. 2; Woods Tr. 293-99.)

[5] While Woods testified that he is prepared to work 16-18 hours per day to "get the job done" during initial operations, and there is no reason to doubt his work ethic in that regard, the conditional nature of the commitment does not provide substantial evidence to show that Woods will be working full-time on day-to-day operations.

[6] *See Department of Interior, BIA, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 53 Fed. Reg. 52829 (December 29, 1988).

[7] Love is a general partnership whose partners are: LBC, which holds a 62% interest; John F. Hash, Audrey L. Collum, Leon D. Long and Robert R. O'Brien, Jr., who each own a 7% interest; and Debra Harris, who owns a 10% interest. (Caldwell Exh. 11.) LBC's officers, directors, and stockholders include: James S. Love, III, Chairman and Director, 28.30% interest; John F. Hash, President and Director, 6.275% interest; Audrey L. Collum, Vice President/Treasurer and Director, 6.25% interest; Jo Love Little, Vice President/Secretary and Director, 28.30% interest; and Mary E. McMillen, Vice President and Director, 28.275% interest. The remaining 2.6% interest in LBC is held by Howard L. McMillen, Jr., C. Chunn Sneed, John C. Thompson, Leon D. Long, Robert R. O'Brien, Don Moore, Dave Vincent, and Dunbar Carpenter. McMillen, Sneed, and Thompson are also directors of the corporation. (*Id.*)

[8] Giles did actively participate. Between the time of merger with Love and the hearing, Giles estimated that he spent at least 250 hours on the prosecute of the application. Those efforts included reviewing and providing comments on pleadings and orders, meeting with, directing the activities of, and engaging in extensive consultation with his F.C.C. attorneys, initiating and personally pursuing settlement efforts, reviewing and paying all bills, and preparing for the hearing. (Giles TV, Exh. 1.)

[9] Giles' only other venture is a small vending company in Tampa, Florida, the net proceeds of which are donated to the Lions Club. (Giles, Tr. 812.) Giles devotes one hour per month to this activity, which does not require him to be at the site of the venture. (*Id.*) The venture is in the process of being dissolved and therefore will not affect Giles' ability to fully integrate into management. (Giles, Tr. 813.)

[10] Mr. Giles has visited the tower site and testified that he has visited the service area. He also has made frequent trips to Grambling State University in Rustin, LA which lies within Giles TV's Grade A contour. (Giles, Tr. 829-30.) But this evidence does not establish ties with or knowledge of Columbia, the community of license, and its needs which would be relevant to offering a local broadcast service.

[11] The limited partners of CBLP and their equity interests are:

Cynthia Woodard	12.5490%
Frank Spooner	12.5490%
Kay La France	4.7059%
John Cooksey	12.5490%
Robert F. Meredith, III	12.5490%
Joseph H. Miller	12.5490%
Francis Elaynne Schendle Irrevocable Inter Vivos Trust	6.2745%
Ian Schendle Irrevocable Inter Vivos Trust	6.2745%

[12] There is a plausible explanation that is propounded by KTVE. McKenna testified that the decision to pursue Channel 11 was based on the coverage inadequacies of KTVE's present facilities. (McKenna, Tr. at 1464.) Specifically, McKenna stated: "KTVE is really licensed to El Dorado, Arkansas. . . . At the time, El Dorado looked like a fair sized market. . . . The unfortunate part about it is that the market has moved south so that the major market in this area today is Monroe, Louisiana." (McKenna, Tr. at 1423.) He added: "Now, this allocation appeared on the Commission's agenda, and we jumped at it. It was what we need to facilitate our becoming or having the opportunity to serve the majority of the people in this market." (McKenna, Tr. 1424.) Another plausible explanation on maximizing a corporate opportunity was raised by Caldwell. Mr. McKenna, the Chairman of the Board and Chief executive Officer of both Gray and KTVE, Inc., is also the executor of the estate of James H. Gray, Sr. He owes a fiduciary duty to ensure that the estate's creditors are paid and that the heirs -- all of whom sit on the boards of Gray and KTVE, Inc., and therefore vote on matters involving KTVE(TV) -- receive as much money as possible from the estate. (McKenna, Tr. 1446-49.) *See* Caldwell PFC at 63. Neither theory is conclusive and, more importantly, there is no wrongdoing shown by the evidence.

[13] Mr. Woods, the sole owner of the applicant, has proposed to work at the Columbia facility 20 to 40 hours a week only during the first year of operation, or as long as is necessary "to accomplish a good operating position," and then reduce his time to approximately two to twelve hours a week. On its face, WoodsCom's proposal is not entitled to integration credit under the controlling precedent because there is no permanent commitment to work a sufficient number of hours at the station.

[14] This *Initial Decision* shall become effective and this proceeding shall be terminated 50 days after its public release if exceptions are not filed within 30 days thereafter, unless the Commission elects to review the case on its own motion. 47 C.F.R. §1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-522

In re Applications of

V.O.B. INCORPORATED	File No. BPH-871102MH
Richard and Stephanie Hermann d/b/a DICK BROADCASTING, LTD.	File No. BPH-871104MD
WILLIAM B. ROTH	File No. BPH-871104MG

For Construction Permit for
New FM Station, Channel 292A,
Ankeny, Iowa

Appearances

James J. Freeman and *Michael D. Smith*, on behalf of V.O.B. Incorporated; *John H. Midlen, Jr.* and *Gregory H. Guillot*, on behalf of Richard and Stephanie Hermann d/b/a Dick Broadcasting, Ltd.; and, *Richard J. Bodorff*, *Jonathan W. Emord*, and *David E. Worthen*, on behalf of William B. Roth.

DECISION

Adopted: October 1, 1990; Released: October 17, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

Board Chairman MARINO:

1. In his *Initial Decision*, 5 FCC Rcd 1285 (1990) (I.D.), Administrative Law Judge John M. Frysiak (ALJ) granted the application of V.O.B. Incorporated (V.O.B.) for a new commercial FM broadcast station at Ankeny, Iowa. Exceptions were filed by Dick Broadcasting, Ltd. (DBL) and William B. Roth (Roth); contingent exceptions were filed by V.O.B. Oral argument was held before the Board on August 8, 1990. Based on our review of the I.D., the underlying record, and the written and oral arguments, we adopt the ALJ's findings of fact, except as modified herein, and affirm his conclusion that the public interest would best be served by a grant of V.O.B.'s application.

BACKGROUND

2. This case turns on the quantitative percentage to which each applicant is entitled under the standard comparative issue for integration of ownership into station management. *See Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 395 (1965) ("Policy Statement") (fulltime participation in station operation by owners considered a "factor of substantial importance"). V.O.B., the preferred applicant, was awarded 100% fulltime integration credit. DBL, its closest competitor, sought a similar 100% credit, but received only 49% fulltime credit, and its remaining 51% ownership integration proposal was accorded parttime credit. Roth, who concedes its only chance to prevail is to discredit the integration proposals of both V.O.B. and DBL, urges to have the frequency awarded by lottery, *see Lottery Selection Among Applicants*, 57 RR 2d 427 (1984), *aff' d sub nom. National Latino Media Coalition v. FCC*, 816 F.2d 785 (D.C. Cir. 1987), because it neither sought nor received any integration credit. On all other comparative factors, the applicants were deemed equal. We turn first to the challenges pertaining to V.O.B.'s application.

V.O.B.

3. V.O.B. is an Iowa corporation with two classes of stock. I.D., para. 4. All of the Class A voting stock is owned by Steven D. Van Oort and his wife Darlene, both of whom propose to be integrated fulltime at the station. *Id.*, paras. 4, 9, 11. Van Oort, who has extensive broadcast experience, intends to serve as general manager of the proposed facility. *Id.*, paras. 9, 15. His wife, who has a limited amount of past broadcast experience (having served three years, 1978-1981, as administrative assistant to the program director, chief engineer and public affairs director of Station WJR-AM, Detroit) will work as assistant general manager and business and public affairs manager. *Id.*, paras. 11, 16. They each have an 18.75% equity ownership in the applicant. *Id.*, para. 4. The Class B non-voting stock is owned by Van Oort's father (Dwayne) and brother (Terry). They own 42.5% and 20% of the equity, respectively. *Id.*

4. Both of V.O.B.'s competitors challenge the 100% fulltime integration credit to V.O.B., arguing that the non-voting shareholders have actively participated in prosecuting V.O.B.'s application; and, thus, that their non-integrated equity interests should at least be attributed to the applicant, or the applicant stripped completely of credit. We discern no persuasive record basis for this claim. Generally, in determining the quantitative percentage to which an applicant is entitled for integration credit, the Commission looks solely at the "voting" ownership that is proposed fulltime in station management. *WHW Enterprises, Inc.*, 89 FCC 2d 799, 816 (Rev. Bd. 1982) (subsequent history omitted). Ownership interests held by passive investors are deemed inconsequential for integration purposes, because "as passive investors [they] have no authority to control the licensee." *Anax Broadcasting, Inc.*, 87 FCC 2d 483, 488 (1981); *Susan S. Mulkey*, 4 FCC Rcd 5520 (1989) (non-voting shareholders generally lack the power to control corporate activities); *see also Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part and denied in part*, 58 RR 2d 604 (1984), *further recon. granted in part*, 1 FCC Rcd 802, 803-804 n.31-32 (1986). However, the Commission has recently observed:

> [S]ometimes an applicant may present a favorable formal structure on paper in order to gain a quantitative integration preference, but in reality that structure is not an accurate depiction of how the licensee's affairs will be managed. Thus, limited partners or non-voting stockholders, although nomi-

> nally without influence over the applicant, may actually participate in or control the applicant's decision-making process. In those instances, the Commission disregards the applicant's formal ownership structure and treats the nominally passive owners (that is, non-voting stockholders or limited partners) as if they were active in the management of the applicant - and thus relevant to the Commission's integration analysis. *See e.g., Signal Ministries, Inc.*, 104 FCC 2d 1481, 1494-97 ¶¶ 15-16 (Rev. Bd. 1986), *review denied* 2 FCC Rcd 1259, 1259 ¶ 2 (1987), *aff'd by judgment sub nom. Adelphi Broadcasting Corp. v. FCC*, 838 F.2d 571 (D.C. Cir. 1988); *KIST Corp.*, 102 FCC 2d 288, 292 ¶ 9 (1985), *aff'd per curiam sub nom. United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C. Cir. 1986), *cert. denied*, 107 S. Ct. 2182 (1987); *Henderson Broadcasting Co.*, 63 FCC 2d 419, 424-26 ¶¶ 10-13 (Rev. Bd. 1977). *See also Cleveland Television Corp. v. FCC*, 732 F.2d 962, 969 (D.C. Cir. 1984). "[W]here there is a basis in the record for inferring that non-voting shareholders will exercise influence or control of an ongoing business," an applicant's integration proposal will be discredited. *Victory Media*, 3 FCC Rcd 2073, 2074 ¶ 18 (1988).

Coast TV, 4 FCC Rcd 1786, 1787 (Rev. Bd. 1989); *see also Metroplex Communications, Inc.*, 4 FCC Rcd 8149, 8159-8160 (Rev. Bd. 1989) (subsequent history omitted). The Commission has emphasized, however, that the role played by the passive investors in the formation of an applicant is not necessarily dispositive of whether the applicant will secretly be managed by its passive investors. *See Victory Media, Inc.*, 3 FCC Rcd 2073, 2074 (1988). The test we must apply is to look at the totality of record evidence. *Metroplex Communications, Inc.*, 4 FCC Rcd at 8159; *see also Magdalene Gunden Partnership*, 3 FCC Rcd 7186 (1988).

5. Here, Van Oort and his wife learned about the availability of the frequency from Van Oort's parents, who reside in Ankeny, after the latter had read about it in the local newspaper. I.D., para. 8. Van Oort was at the time working as station manager of WWJ/WJOI Radio, Southfield (Detroit), Michigan. He had attended high school in Ankeny and worked there summers during his college years. *Id.*, paras. 12, 15. We discern nothing peculiar in the fact that Van Oort learned about the frequency from his parents, or, given his background in broadcasting and former ties to Ankeny, that they would alert him to the availability of the frequency. Similarly, given the fact that Van Oort resided out of state and his family had longstanding ties to the Ankeny business community, it is not surprising that Van Oort's father and brother assisted him in his initial activities relating to securing the station. Van Oort's father is a semi-retired Ankeny businessman and consultant to a construction company he founded, *id.*, para. 6, and his brother is a medical doctor in Ankeny. *Id.* Not surprisingly, Van Oort asked his father to check the area where a station formerly operating on the same frequency had its tower to see if any land was available for another antenna site, and as a result, his father contacted a realtor. *Id.*, para. 8. He also recommended a local attorney, whom Van Oort retained to handle corporate work for the applicant, and both he and the brother introduced Van Oort to a local Ankeny bank. *Id.*

6. Van Oort, however, procured his own communications counsel and conducted negotiations concerning both the transmitter site and bank financing. He also completed the application form without his family's input. Moreover, V.O.B.'s written direct testimony represents that the non-voting shareholders will not be materially involved in the management or day-to-day operations of the proposed facility, and except for a possible consultation with Van Oort's father concerning construction of the proposed station (because of his experience as a local contractor), no non-voting shareholder will provide services to or be employed by the station to serve as an independent contractor or agent for the station. V.O.B. Exh. 1. In the context of this case, none of the activities in which the non-voting shareholders participated provides probative evidence that they would participate in or control the applicant's decision-making process. *See High Sierra Broadcasting, Inc.*, 96 FCC 2d 423, 435 (Rev. Bd. 1983) (independent family relationships may have attributes which in non-family relationships would be persuasive indicia of real-party status).

7. DBL would also strip V.O.B. of any integration credit because V.O.B.'s corporate documents do not permanently bar passive investors from becoming voting shareholders. It urges the Board to adopt what it concedes is a new policy of discounting integration credit to two-tier corporate applicants which fail to include in their corporate documentation a provision explicitly prohibiting their non-voting shareholders from running the business of the station. We have previously rejected an analogous argument in *Vela Broadcasting Co.*, 2 FCC Rcd 3663, 3667 (Rev. Bd. 1987). There, we held that the lack of an explicit provision guaranteeing permanence of general partners did not negate an integration proposal, because nothing in the partnership agreement, or elsewhere, supported the inference that the partnership would be ephemeral. Moreover, as even DBL acknowledges, the Commission has held that non-voting stockholders are by definition prohibited from influencing or controlling corporate activities, *see Victory Media, Inc.*, 3 FCC Rcd at 2074; *Attribution of Ownership Interests*, 97 FCC 2d at 1021-1022, and V.O.B. represented at hearing that none of its non-voting shareholders would be involved in the management of the proposed station. That is sufficient. In any event, DBL's suggestion that the Board now require such an explicit provision appears to be beyond the purview of our delegated authority. *Horne Industries, Inc.*, 53 RR 2d 1647 (1983) (Board not authorized to make new policy or change old policy).

8. Finally, DBL attacks V.O.B.'s integration proposal, arguing that that applicant's 50/50 allocation of voting power between husband and wife confers negative control on both principals, encouraging each to look to the non-voting shareholders should an impasse arise. However, the contention that an equal voting allocation defeats an integration proposal has previously been rejected in *WHW Enterprises Inc., supra*, 89 FCC 2d at 815, and that case is controlling here. Roth, in turn, claims that V.O.B.'s integration commitment is unreliable because Van Oort's father is obligated for 42.5% of the applicant's prosecution expenses and his testimony (at Tr. 43) putatively reflects that his financial support is contingent on his satisfaction that the facility's operation will be profitable. That contention is also unavailing. The financial commitment pertains only to the applicant's prosecution expenses, not to construction and initial operating costs

which are to be financed by a bank loan, and the record shows that Van Oort's father apparently has already satisfied himself as to the station's profitability, since he has met all capital calls (Tr. 74), and voiced no anticipation that he will not do so in the future. In sum, V.O.B. is entitled to 100% fulltime integration credit.

DBL

9. DBL, as structured at the time of hearing, was a general partnership comprised of Richard Hermann (with 51% equity) and his wife Stephanie (49% equity), both proposing to be integrated fulltime at the station. I.D., para. 19. He was to work as the station's general manager and she as program and news director, and as assistant manager. *Id.*, paras. 27, 34. Hermann, then a long-time practicing local attorney, planned to continue his law practice, while serving as the station's general manager, submitting that he could, and would, work at the station from 6:00 to 9:00 a.m. and 4:30 to 8:00 p.m. Mondays through Fridays, and from 9:00 a.m. to 6:00 p.m. on Saturdays. *Id.*, para. 29. In contrast, Hermann's wife, who worked as his secretary/girl Friday, office manager, and paralegal, pledged to terminate her employment if they received the construction permit. *Id.*, para. 35. At the close of the record, Hermann died, and his wife became DBL's sole owner. *Id.*, para. 22. By *Memorandum Opinion and Order*, FCC 90M-16, released January 5, 1990 (granting amendment), the ALJ permitted Ms. Hermann to substitute for her husband's integration proposal while retaining her own 49% integrated position, subject to a proviso that she would be entitled to the same amount of the deceased's integration credit that he would have been entitled to had he not passed away. *Id.*, para. 69. Subsequently, finding that Hermann's commitment to fulltime station participation was overly optimistic in light of his outside activities, but satisfied that he would have been able to spend some time at the station, the ALJ awarded DBL parttime credit for Hermann's 51% interest while fully crediting Ms. Hermann's 49% proposal. *Id.*, paras. 65-66, 68.

10. DBL contends that the ALJ misinterpreted Commission precedent in ruling that DBL could receive no more credit for its substituted proposal than it would have received if Hermann had not died. It argues that, because Ms. Hermann's qualifications were already carefully scrutinized at hearing, the proper procedure should have been merely to permit the substitution without further inquiry (apparently incorporating the deceased's qualitative attributes), while recognizing all of Ms. Hermann's qualitative attributes (including 100% gender enhancement), because the changes occurred by "operation of law" rather than a "voluntary" restructuring for purposes of obtaining a comparative advantage.

11. It is DBL, not the ALJ, who has misinterpreted Commission precedent applicable here. All of the cases cited in its brief recognize the longstanding principle that applicants may not enhance their competitive positions after the period allowed for filing amendments as of right has expired. *See generally Alexander S. Klein*, 86 FCC 2d 423, 434 (1981). The purpose underlying this requirement is to ensure, to the extent possible, that hearing proceedings before the Commission will be tried in a fair, orderly, and timely fashion. *See Daytona Broadcasting Co., Inc.*, 97 FCC 2d 212, 216 (Rev. Bd. 1984) ("comparative licensing proceedings . . . too exhaustive and expensive to allow . . . applicant[s] to be drawn deeply into competition for . . . license, only to be confronted by a competitor whose comparative position has been improved *post hoc* by decisionally significant changes in its ownership structure or . . . broadcast proposals"), *modified on other grounds*, 101 FCC 2d 1010 (1985) and 103 FCC 2d 931 (1986). Thus, although "upgrading" is not permitted, "downgrading," or a diminution of an applicant's comparative position -- which causes no prejudice to competing applicants and more accurately reflects the reality of an applicant's ownership structure -- is generally recognized, whether the changes occur "voluntarily," or are necessitated by "operation of law." *Nuance Corp.*, 85 FCC 2d 412, 418-419 (Rev. Bd. 1981) (recognizing "downgrading" caused both by death, where no substitution occurred, and by voluntary resignation), *review denied*, FCC 81-473, released October 7, 1981.

12. A general exception to the diminution principle, however, is made in so-called "death" cases where an applicant seeks to substitute a replacement for an integrated principal who has died during the pendency of a proceeding, *see Rose Broadcasting Co.*, 68 FCC 2d 1242, 1249 (1978), but, for the reasons recited above, the *status quo* of the applicant's integration proposal is only countenanced as long as no comparative enhancement occurs. *See, e.g., Peoples Broadcasting Corp.*, 94 FCC 2d 429, 432 (Rev. Bd.), *recon. denied*, 94 FCC 2d 429 (Rev. Bd. 1983), *review denied*, FCC 83-594, released December 15, 1983. And, where the deceased is found not to be entitled to integration credit, his stock interest is not permitted to be included in the applicant's integration calculus. *Muncie Broadcasting Corp.*, 89 FCC 2d 123, 132 (Rev. Bd. 1982); *Carta Corp.*, 5 FCC Rcd 3696, 3702-3703 (Rev. Bd. 1990) (remanding case to allow opponents opportunity to test proposal where substitute principal was not previously part of the applicant). Where the deceased principal expired prior to his application being designated for hearing, in *Richardson Broadcasting Group*, 5 FCC Rcd 5285, 5287-5288 (Rev. Bd. 1990), it was held that the deceased's integration "intentions" at the time the application was filed were legally irrelevant, because he would not have had to declare unequivocally whether to integrate until the post-designation exhibit exchange date, and by that time, the applicant, as revised, had proposed fulltime integration.

13. DBL argues, alternatively, however, that even if the ALJ's interpretation of the law is correct, he nevertheless erred in concluding that Hermann would not have effectuated his fulltime commitment. We agree with the ALJ that Hermann's fulltime commitment was unrealistic. An applicant has the burden of proving how it will effectuate its integration proposal. *Cuban American Ltd.*, 5 FCC Rcd 3781, 3785 (1990). Here, Hermann planned to practice law from 9:00 a.m. to 4:30 p.m. Mondays through Fridays, virtually the same hours the office staff, whom Hermann was to supervise daily, would be working at the station. I.D., paras. 29-30. Continuation of the law practice was imperative because it provided the Hermanns 85% of their income and was conceded to be an integral factor in making the station viable. *Id.*, para. 28. And, while Hermann intended to rely on two assistants to reduce the time necessary to be devoted to his practice, he acknowledged that it would be difficult to delegate much of his law business, because his clients "like[d] to depend on the fact that they got Dick Hermann as their lawyer." *Id.*, at para. 31. He also was ambivalent about being

restricted to the hours he could work at the station, and allowed that the amount of time he would spend at the station would be determined primarily by the needs of the business. *Id.*, para. 32. On balance, this does not constitute the type of "fulltime" participation that the Commission contemplated in its *Policy Statement*, 1 FCC 2d at 395, as warranting substantial weight in the comparative process. Indeed, similar efforts by applicants to establish they would work, albeit parttime, at the station during various scattered hours, including evenings and weekends, have been severely criticized, because of the strain placed on parties and the Commission's resources to test such elusive proposals. *Midwest Broadcasting Co.*, 70 FCC 2d 1489, 1494-1495 (Rev. Bd. 1979), *review denied*, FCC 79-397, released June 21, 1979.

14. Subsequent to the release of I.D., the Commission announced that implementation of the Herchman-Herfindahl Index (HHI), designed for weighing the relative merits of parttime and fulltime integration proposals (*see Omaha TV 15, Inc.*, 4 FCC Rcd 730, 734 (1988)), requires an exact determination of the number of hours that each integrated principal will devote to the station management. *Cuban American Ltd.*, 5 FCC Rcd at 3785. Where there is no record basis for determining the number of hours a principal will devote to the station, not even parttime credit is accorded. *Id.* Because a determination cannot be made on this record as to the precise number of hours Hermann would have been able to devote to the station, no parttime credit will be given. DBL's opponents also challenge the 49% integration credit awarded for Ms. Hermann's original proposal at the station. We need not reach this exception since, without Hermann's 51% integration credit, DBL cannot prevail over V.O.B.'s 100% fulltime credit. *See Miracle Strip Communications, Inc.*, 4 FCC Rcd 5064, 5066 (1989) (clear quantitative differential of 12.5% (or 1250 HHI) cannot be overcome by the qualitative attributes of the competing applicant's integrated owners). Similarly, because it is also not decisionally significant, we have not considered V.O.B.'s contingent exceptions that the ALJ erred in failing to add financial qualifications and misrepresentation issues against DBL.

15. ACCORDINGLY, IT IS ORDERED, That the application of V.O.B. Incorporated (File No. BPH-871102MH) for a Construction Permit for a new FM Station at Ankeny, Iowa IS GRANTED; and that the applications of Dick Broadcasting, Ltd. (File No. BPH-871104MD) and William B. Roth (File No. BPH-871104MG) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-358

In re Applications of

TEXAS COMMUNICATIONS LIMITED PARTNERSHIP	File No. BPH-870710MI
BEAUMONT SKYWAVE, INC.	File No. BPH-870710NA
CHM BROADCASTING	File No. BPH-870710NC

For Construction Permit for New
FM Station, Channel 273C2,
Beaumont, Texas

Appearances

Stephen Diaz Gavin, on behalf of Texas Communications Limited Partnership; *Donald J. Evans* and *Carol A. Evans*, on behalf of Beaumont Skywave, Inc.; *Eric L. Bernthal*, *Everett C. Johnson, Jr.*, and *Carol Ann Siciliano*, on behalf of CHM Broadcasting.

DECISION

Adopted: October 1, 1990; Released: October 17, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

Board Chairman MARINO:

1. Two unsuccessful applicants have filed exceptions to the selection of CHM Broadcasting (CHM) as the superior comparative applicant in this case. *See Initial Decision* of Administrative Law Judge Edward J. Kulhmann, 5 FCC Rcd 1592 (1990). Based on our review of the parties' written briefs and oral argument held August 3, 1990, we find that two basic qualifications issues must be resolved before a comparison of the three remaining applicants is necessary. The two issues are: first, whether Texas Communications Limited Partnership (Texas Ltd.) was dilatory in attempting to resolve an air hazard problem so that it could not demonstrate good cause for its proposed amendment some nineteen months after receiving notice of the problem; and, second, whether CHM Broadcasting's principal has demonstrated that he has sufficient financial resources to satisfy his $4.8 million commitments to CHM's application in this case and numerous other applications pending before the Commission. Since the record before us mandates that both issues must be resolved against the applicants, the comparative issue is not decisional and the basically qualified application of Beaumont Skywave, Inc. will be granted.

2. *Air Hazard Issue* : In resolving the air hazard issue against Texas Ltd., the ALJ concluded that:

> . . .on April 19, 1989, Texas Ltd. moved to amend to designate a new site. Texas Ltd. has been unable to demonstrate good cause for its amendment and its request was denied. *Memorandum Opinion and Order*, FCC 89M-1985, released July 28, 1989. The hearing record establishes that Texas Ltd. was dilatory in resolving the air hazard problem and that the FAA has found its current site a hazard to air navigation. In addition, Texas Ltd. has not demonstrated that it is technically qualified: its application will be denied.

I.D., para. 49. Texas Ltd. claims in its exceptions (Br. 7-15) that the ALJ erred in rejecting its transmitter site amendment which would have allegedly eliminated the air hazard problem. Its competitors, Beaumont Skywave (Reply 2-11) and CHM (Reply 2-4), respond that the amendment was properly rejected as dilatory, and that controlling precedent justifies disqualification of an applicant for failing to cure diligently a site defect. *See Cuban - American Ltd.*, 2 FCC Rcd 3264, 3265-3266 (Rev. Bd. 1987), *affirmed*, 5 FCC Rcd 3781 (1990). We affirm the ALJ's action for the reasons set out below.

3. "Due diligence," the Commission has held, dates from "the time the applicant is, or should have been, apprised of the problem requiring amendment." *Brownfield Broadcasting Corp.*, 88 FCC 2d 1054, 1058 (1982). Besides due diligence, Texas Ltd. had to also show "that the proposed amendment was not required by the voluntary act of the applicant; that no modification or addition of issues . . . would be necessitated; that the proposed amendment would not disrupt the orderly conduct of the hearing; [and] that the other parties will not be unfairly prejudiced . . . " *Erwin O' Conner*, 22 FCC 2d 140, 143 (Rev. Bd. 1970). Since Texas Ltd. proposed to change its antenna site engineering, it was also "subject to the stricter forseeability test for engineering amendments set out by the Commission in 47 CFR 73.3522(b)(1)." *Goodlettsville Broadcasting Company, Inc.*, 4 FCC Rcd 8627, 8629 (Rev. Bd. 1989), *review denied*, 5 FCC Rcd 4593 (1990).

4. Here, the record fully supports the ALJ's conclusion that Texas Ltd. did not establish compliance with the more lenient *Erwin O' Conner* good-cause test. Texas Ltd.'s engineer learned in September 1987, just two months after Texas Ltd. filed its application, that Texas Ltd.'s proposed site would be a hazard to air navigation because its tower is too high. (Tr. 62-63, 66-67). Its general partner conceded that its engineers had not been diligent in resolving the problem (Tr. 62, 65), but claimed that neither the applicant nor its legal counsel had been notified by the engineer about the FAA determination. The ALJ found, however, that the general partner never called the engineer to inquire about the FAA determination (Tr. 63) until August 1988, when the Commission's designation order gave Texas Ltd. specific legal notice of the air hazard issue. The general partner testified at hearing that Texas Ltd. filed its petition to amend in September of 1988. (Tr. 78). In fact, the amendment was not filed until April 19, 1989, and the general partner could

not explain why Texas Ltd. waited nearly eight months (from August 1988 to April 1989) to change to a site designated by another applicant to the case. (Tr. 85). The ALJ also found that on May 10, 1989, the FAA notified Texas Ltd. that "its new site would exceed FAA limitations by nine feet and also that it would cause an electromagnetic intermodulation interference problem because of the tower's proximity to two other broadcast towers." *I. D.*, para. 5.

5. We agree with the ALJ that Texas Ltd. did not demonstrate "due diligence." It was put on notice by the FAA in September 1987 and by the FCC in August 1988 about the air hazard problem. It did not seek leave to amend until April 1989, nineteen months after the FAA determination, and some eight months after the FCC designated the air hazard issue for hearing. Past Commission cases have required much prompter action. *E. g., Goodlettsville, supra.* Moreover, the ALJ also found that the proposed amendment would require the modification or addition of new issues because the new antenna site "was at a height that is unacceptable to the FAA"; gave rise to "an issue about the environment which Texas Ltd. has not addressed"; would "disrupt the orderly conduct of the hearing"; and prejudice the rights of the other applicants to a speedy resolution of the issues in this case. *See Memorandum Opinion and Order*, FCC 89M-1985, released July 28, 1989, at para. 12, and *I. D.*, para. 49.

6. Texas Ltd. contends that it acted with due diligence because the eleven month delay from FAA notification in September of 1987 to FCC designation in August of 1988 is attributable to its consulting engineer who failed to inform the applicant or its counsel about the FAA hazard determination (Br. 7-8). Beaumont correctly responds, however, that (Reply 7-8) the Commission has indicated that an applicant "is not relieved of its duty to update its application and keep the Commission informed merely because of its misplaced reliance upon its engineer." *See Natick Broadcast Associates, Inc.*, 6 FCC 2d 607, 611 (1967); *cf. Hillebrand Broadcast Inc.*, 1 FCC Rcd 419 (1986) (applicant responsible for defaults of its legal counsel). Moreover, the record supports the finding that after retaining the engineer, Texas Ltd. was remiss in contacting him about the FAA determination until after the Commission designated an air hazard issue in August of 1988. Thus, the pre-designation delay of some eleven months must be considered in any due diligence analysis. Of course, as the ALJ found, this delay does not stand alone, since the applicant also allowed another eight months to pass before finally amending to specify the site which at the outset had been specified by another applicant in the case.

7. Texas Ltd. attempts to attribute the eight month delay to the FAA, which it claims would not issue a no hazard determination because of general electro-magnetic interference (EMI) problems shared by the three remaining applicants in this case. (Br. 8-15). But when the ALJ asked at the hearing for an explanation for the delay, this reason was not given by the general partner of Texas Ltd. *I. D.*, para. 4. The record further establishes that the FAA originally issued a prompt determination in September of 1987; and that after Texas Ltd. finally petitioned for leave to amend in April 1989, the FAA again promptly notified the applicant that its proposal exceeded FAA height limitations. *Id.*, para. 5. Moreover, the ALJ found its amendment contrary to the requirements of the Commission's rules because it did not address an environmental issue. Neither of the two faults noted by the ALJ, which prevented favorable action on the proposed amendment, was attributable to the FAA. Thus, if Texas Ltd., like the remaining applicants in the case, had proposed an amended site that did not exceed FAA height limitations or raise an environmental problem, it too might have enjoyed the benefit of the condition which the Bureau has subsequently developed to resolve the EMI problem. *Id.*, para. 48. In sum, we agree with the ALJ's conclusion that Texas Ltd.'s own dilatory conduct before and after its application was designated for hearing required denial of its belated and defective petition to amend.

8. *CHM's Finances*: The issues against CHM as framed by the ALJ and resolved in the *I. D.*, *see* paras. 1, 9-23, 50-60, called for an inquiry into whether CHM falsely certified that it was financially qualified, and whether, in fact, CHM was and is financially qualified to construct and operate the proposed Beaumont station. Our review of the record, however, persuades us that only an examination concerning CHM's *current* financial posture is necessary to rule on CHM's basic qualifications to be a Commission licensee. Thus, consistent with the Board's approach in *Aspen FM, Inc.*, 5 FCC Rcd 3196, 3199 at para. 20 (Rev. Bd. 1990), we will not consider the more subjective question of whether there also existed a "conscious intent to deceive" when the applicant certified it was financially qualified. *See also Marlin Broadcasting of Central Florida, Inc.*, 4 FCC Rcd 7945, 7948 (Rev. Bd. 1989), *recon. denied*, 5 FCC Rcd 322 (1990), *review denied*, FCC 90-320, adopted September 19, 1990.

9. Briefly, at the time CHM certified in its application that it was financially qualified, the applicant purportedly had two alternative financing plans to meet its estimated construction and initial three-month operating costs of $482,000. The first plan relied on loans from the East Texas State Bank and CHM's limited partner, Kent Foster, in the amounts of $350,000 and $150,000, respectively. The East Texas State Bank failed in November 1988, and its successor, the First Bank of Buma, indicated that it was not "interested in extending any commitment, letter or line of credit to Kent [Foster] or to any business entity with which he was affiliated." *I.D.*, at para. 57. CHM subsequently sought to replace the East Texas State Bank loan by securing a loan commitment for a similar $350,000 from the National Bank of Washington (NBW) in March 1989, and it is primarily on the basis of the combination of bank and Foster loans that the *I.D.* found CHM to be financially qualified. *Id.*, paras. 50-58. After the release of the *I.*D. and the filing of exceptions, however, NBW also failed, and CHM has not timely amended to show that NBW's successor would honor the March 1989 loan commitment. Thus, to the extent that CHM's competitors have raised questions concerning the reliability of either bank loan commitment, we do not reach such exceptions since both bank commitments are moot and no longer useful in establishing CHM's financial qualifications.

10. CHM's second financing plan relied on Foster's oral promise to provide funds up to $500,000 to meet its requisite costs. This commitment was also reduced to writing in CHM's Limited Partnership Agreement. TCL Exh. 10, at 7-8. CHM's competitors, however, argue that Foster already has extensive obligations to various other FCC applicants that vastly exceed his assets. CHM responds by claiming that Foster's "net worth" is more than double his aggregate contingent obligations and exceeds

those obligations by a factor of three if property in the Cayman Islands is included. It argues that these assets fully enable him to meet his present firm commitment to lend up to $500,000 to CHM. Exceptors also claim that Foster has previously "reneged" on other financial commitments to several other FCC applicants, citing three Commission proceedings which have involved Foster.

11. At the heart of financial qualifications is the requirement that an applicant must have "reasonable assurance" of sufficient net liquid assets on hand, or sufficient funds from committed sources, to construct and operate the proposed facility for three months without revenues. *See Jam Communications, Inc.*, 4 FCC Rcd 3754, 3757 (Rev. Bd. 1989); *Scioto Broadcasters, Limited Partnership*, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990). An applicant is permitted, however, "to rely on illiquid assets, such as real estate, where the applicant furnishes a relevant appraisal of the property." *Opal Chadwell*, FCC 88I-045, released May 5, 1988; *see also Port Huron Family Radio, Inc.*, 5 FCC Rcd 4562 (1990). Generally, the fair market and quick sale value of real estate is reduced by the Commission as much as one-third for calculating availability of funds. *Port Huron Family*, 5 FCC Rcd at 4563 and n.5. Accounts receivables must also be sufficiently aged before they may be taken into consideration. *Id.*, at n.6. Also, where, as here, an applicant files multiple applications, *it must be able to demonstrate that it is financially qualified as to all pending applications. See George Edward Gunter*, 104 FCC 2d 1363 (Rev. Bd. 1986); *Welch Communications, Inc.*, 5 FCC Rcd 4850 (Rev. Bd. 1990). *See also Public Notice on Matter of Certification of Financial Qualifications by Applicants for Broadcast Station Construction Permits*, 2 FCC Rcd 2122 (1987) (advising applicants that processing staff may question validity of the applicant's financial certification where applicant has large number of pending broadcast applications). Finally, where the proposed lender is not a financial institution, but a person, the applicant may prepare a balance sheet or other documentary evidence after certification demonstrating that at the time of certification, the lender had the necessary financial resources to meet his financial commitment. *Northampton Media Associates*, 4 FCC Rcd 5517, 5519 (1989), *recon. denied*, 5 FCC Rcd 3075 (1990).

12. Here, to establish Foster's financial resources, CHM submitted three "reconstructed" personal financial statements, the latest dated March 1989. CHM Fin. Exh. 4, at Exh. D. Professional appraisals for certain of the 1989 illiquid assets were submitted, including: property in the Grand Cayman Islands (CHM Fin. Exh. 5); four parcels of real estate in Texas (CHM Fin. Exh. 6); residential real estate in Washington, D.C. (CHM Fin. Exh. 7); and Foster's personal collection of decorative art (rugs, furniture, paintings and art objects) (CHM Fin. Exh. 8).

13. At the outset, we note that the Grand Cayman property must be excluded from any analysis because it is clear from Foster's testimony at hearing (Tr. 1241) and from counsel's remarks at oral argument (Tr. 1363-1365) that Foster does not hold legal title to that property. *See Roxanne Givens*, FCC 90R-78, released August 31, 1990 (claimed value of stocks in which title is absent not the kind of ready liquidity necessary to establish financial qualifications); *cf. WHW Enterprises Inc.*, 1 FCC Rcd 295 (1986) (reliance on property in which principal lacked title resulted in dispositive comparative demerit), *recon. denied*, 2 FCC Rcd 2375 (1987). Foster may hold a beneficial interest, as claimed, in that property, but there has been no demonstration on the record that he could convert the property quickly to liquid assets. And, in fact, what little is on the record demonstrated otherwise, as is shown by counsel's remarks at oral argument (at 1364):

> Mr. Foster is prohibited by Cayman law to disclose the actual registration of the stock in the Cayman Islands. I know it sounds wacky, and I would worry about it myself, too. Except for the fact that Mr. Foster's father was born and raised in the Caymans.

14. With respect to the other appraisals, their aggregate value (mostly quick sale value) is approximately $2.5 million:

4 Property Parcels (mostly vacant land)	$ 1,225,000
House (Washington, D.C.)	950,000
Decorative Art	407,000
	$ 2,582,000

After adjustment pursuant to the Commission's *Port Huron* formulation, that figure shrinks to a little over $1.7 million. The financial statement further reflects that Foster's liquid assets are approximately $1.5 million. CHM Fin. Exh. 4. Thus, Foster has shown total assets of $4,082,000. Foster's statement, however, also reflects liabilities of $630,000 and obligations to various FCC applications (including the instant one) for approximately $4.8 million, or a total of $5,430,000 which Foster must show he could raise. Thus, even a cursory examination of his latest financial statement establishes that CHM has failed to demonstrate that Foster has sufficient net liquid assets or other assets that may be readily convertible to liquid assets to meet *all of his current FCC obligations*. Without such a showing, CHM cannot meet its burden of establishing that it is financially qualified.

15. In light of CHM's failure to establish its financial qualifications, we need not rule on the contentions that Foster previously "reneged" on his earlier financial commitments in other proceedings, although, obviously, his possible financial defaults, which we briefly outline below, are a matter of serious concern. Moreover, they appear to reflect an emerging pattern concerning Foster's financial practices before the Commission of attempting to establish his financial qualifications by an overall impression of wealth while being simultaneously unable or unwilling to present a solid, concrete, unquestionable financial proposal. The *I. D.* (at paras. 20-22) includes testimony given by Rita Capobianchi, a former 50% partner with Foster in a corporation, Americell, Inc., that filed cellular applications in 150 metropolitan statistical areas. Capobianchi charged that Foster failed to honor his financial promises towards one of their applicants selected by lottery, and as a result, that tentative selectee was forced to sell its authorization instead of constructing and operating the system. According to Capobianchi, Foster had never showed her a balance sheet, but he did tell her about his paintings, race horses, and cellular interests. *Id.*, para. 20. From his description, she decided that he could supply the money. *Id.* The *I. D.* reached no ultimate conclusions on Capobianchi's allegations, and it appears

that the subject matter is under current civil litigation in federal court (Tr. 1277), but such allegations underscore the necessity for closely scrutinizing Foster's ability to meet his financial commitments.

16. In a second Commission proceeding, Foster was affiliated with Global Land Mobile Satellite, Inc. (Global), an applicant to construct and operate a new Mobile Satellite System (MSS). In a *Licensing Order*, 2 FCC Rcd 485 (1987), the Commission determined that only one MSS system was feasible for the first generation of MSS space stations and adopted a joint ownership structure for the system. Rather than holding a comparative hearing or applying a strict qualifications criteria, the Commission concluded that the system's licensee should be a consortium comprised of all financially qualified entities. It conditioned participation in the consortium on each applicant demonstrating its financial qualifications by making an initial $5 million cash contribution into the consortium. Foster's Global failed to remit the initial payment, and its application was consequently dismissed. 2 FCC Rcd 5552 (Com. Car. Bur. 1987), *review denied*, 4 FCC Rcd 6029 (1989).

17. The third proceeding, *Kent S. Foster*, 5 FCC Rcd 1700 (Mob. Serv. Div. 1990), was released after the instant *I.D.* had been issued. There, the Chief, Mobile Servies Division, held that Foster had not demonstrated that he had a firm commitment for funds upon which he could rely to construct and operate a proposed cellular system, notwithstanding a similar claim as here that his net worth was in excess of $10 million. 5 FCC Rcd at 1703 n.9. Foster was relying on a bank loan commitment for funds to finance any of the Rural Service Area Markets for which he received authorizations as a result of Commission lotteries. The loan commitment letter, which in cellular cases is subjected to a stricter standard than broadcast proceedings, *see* 47 CFR § 22.917, was found to be fatally deficient.

18. In sum, our holding that CHM has not established its financial qualifications is based on CHM's most recent financial proposal. Foster's previous financial history in Commission cases raises serious questions concerning the reliability and candor of his financial representations, and would necessitate a remand were CHM not already found to be financially disqualified. Because substantial and material questions of fact have been raised in several individual cases which may justify a broader inquiry, both the Mass Media and Common Carrier Bureaus, which have been called upon to process Foster's multiple filings, may wish to devise a joint test of his overall financial qualifications before processing any more individual applications.

19. ACCORDINGLY, IT IS ORDERED, That the petition to reopen the record and receive evidence filed April 12, 1990 by Beaumont Skywave, Inc. IS DISMISSED as not being decisionally significant; and that the motion for leave to file supplemental statement, filed July 23, 1990 by CHM Broadcasting Limited Partnership IS GRANTED; and,

20. IT IS FURTHER ORDERED, That that the applications of Texas Communications Limited Partnership (File No. BPH-870710MI) and CHM Broadcasting (File No. (BPH-870710NC) ARE DENIED; and that the application of Beaumont Skywave, Inc. (File No. BPH-870710NA) for a construction permit for a new FM station at Beaumont, Texas IS GRANTED subject to the following condition:

Upon receipt of notification from the Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one year ofK interference-free operation.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-440

In the Matter of

Amendment of Section 73.202(b), RM-7452
Table of Allotments,
FM Broadcast Stations.
(Central Valley, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 25, 1990; Released: October 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Quality Broadcasters of California, Ltd. (petitioner), licensee of Station KNNN(FM) (formerly Station KRNN(FM)),[1] Channel 257A, Central Valley, California, seeking the substitution of Channel 257C3 for Channel 257A at Central Valley and modification of its license to specify operation on the higher powered channel. Petitioner failed to state its commitment to apply for Channel 257C3 if it is ultimately allotted, and should correct the deficiency in response to this *Notice*. *See* paragraph 2 of the attached Appendix.

2. A staff analysis has determined that Channel 257C3 can be allotted to Central Valley at petitioner's current site,[2] consistent with the minimum distance separation requirements of the Commission's Rules. [3]

3. We believe the public interest would be served by this proposal since it could provide Central Valley with an expanded coverage FM service. Moreover, since petitioner's modification request conforms with the provisions of Section 1.420(g) of the Commission's Rules, we shall propose to modify the facilities of Station KNNN(FM) without entertaining other expressions of interest.

4. Accordingly, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Central Valley, California	257A	257C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 3, 1990,** and reply comments on or before **December 18, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Roger J. Metzler, Esq.
McQuaid, Bedford, Clausen & Metzler
650 California Street, Suite 800
San Francisco, CA 94108

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] At the time this proposal was filed, an application for the voluntary assignment of the construction permit and license for Station KRNN(FM) from Bott Broadcasting West, Inc. to petitioner was pending (File No. BAPLH-890804HL). The assignment was granted September 29, 1989, and consummated October 4, 1989. Thereafter, the call sign was changed to Station KNNN(FM). (Petitioner misidentified the call letters of the Central Valley station in its petition. Petitioner stated that its proposal concerned Station KCIB-FM, Channel 257A, Central Valley. However, a diligent search of the Commission's records failed to reveal the existence of those call letters.)

[2] Coordinates at petitioner's current site for Station KNNN(FM) are 40-33-46 and 122-27-07.

[3] Because this proposal was filed prior to October 2, 1989, distance computations herein are based on the minimum spacings set forth in Section 73.213(c)(1) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-435

In re Applications of

HI HO BROADCASTING CORP. File No. BRCT-880818KE

For Renewal of License of Station
KFNE(TV), Riverton, Wyoming

and

FIRST NATIONAL BROADCASTING CORP. File No. BPCT-880901KE

For Construction Permit
Riverton, Wyoming

HEARING DESIGNATION ORDER

Adopted: July 31, 1990; Released: October 16, 1990

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned application for the renewal of license of station KFNE(TV), Riverton, Wyoming, filed by Hi Ho Broadcasting Corp. (Hi Ho), and the mutually exclusive application of First National Broadcasting Corp. (First National) for a new commercial television station to operate on channel 10, Riverton, Wyoming.

2. From our review of First National's application we cannot determine whether the applicant is in compliance with our environmental rules. Likewise, Hi Ho has not submitted the required environmental filing with its renewal application. Under the rules, a licensee must determine whether the radiation from its antenna would have a significant environmental effect under the criteria set out in Section 1.1307 of the Commission's Rules. If the application is subject to environmental processing under the Section 1.1307 criteria, the applicant must then submit an environmental assessment (EA) containing the information delineated in Section 1.1311 of the Commission Rules. Section 1.1307(b) states that an EA must be prepared if the station operation would cause exposure of workers or the general public to levels of radio frequency radiation exceeding specific standards. An examination of First National's application suggests that it has not followed the procedures outlined above. Hi Ho, as required of renewal applicants, did not submit a RF radiation statement. The applicants will be required to file, within 20 days of the release of this Order, a statement or showing with respect to radiation hazards that might have an adverse effect on the quality of the environment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Television Branch, Mass Media Bureau, who will then proceed regarding this matter in accordance with the provisions of Section 1.1308. A copy of the statement must also be filed with the Chief, Hearing Branch, Mass Media Bureau. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is complete. *See Golden State Broadcasting*, 71 FCC 2d 229 (1979). *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

3. First National's application does not include Page 6, which contains Sections III and IV of the FCC Form 301. Section III inquires of an applicant's financial qualifications. Thus, First National has not certified that it is financially qualified to construct the proposed facilities. Accordingly, First National will be given 20 days from the release date of this Order to amend its application to provide Page 6, and, if appropriate, to submit a certification as to its financial qualification, to the presiding Administrative Law Judge in the manner called for in Section III, FCC Form 301. If First National cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

4. First National submitted a facsimile of Page 23, Section VI and VII. Its responses to the questions concerning Equal Employment Opportunity and its certification with respect to the public notice requirement are not legible. First National will be required to submit an appropriate amendment to the presiding Administrative Law Judge within 20 days after this Order is released.

5. Except as indicated by the issues specified below, the applicants are qualified. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to either First National Broadcasting Corp. or Hi Ho Broadcasting Corp. which concludes that the proposed or existing facilities are likely to have an adverse effect on the quality of the environment:

(a) to determine whether the applicants' proposals are consistent with the National Environmental Policy Act, as implemented by Sections 1.1301-1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

2. To determine, which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. IT IS FURTHER ORDERED, That both First National Broadcasting Corp. and Hi Ho Broadcasting Corp. shall submit amendments containing appropriate environmental statements as explained in paragraph 2, above, to the presiding Administrative Law Judge and a copy each to the Chief, Hearing Branch and Chief, Television Branch, Mass Media Bureau, within 20 days after this Order is released.

8. IT IS FURTHER ORDERED, That First National Broadcasting Corp. shall submit a completed Page 6, FCC Form 301 and shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the presiding Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after the release of this Order.

9. IT IS FURTHER ORDERED, That First National Broadcasting Corp. shall submit an original legible Page 23, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

10. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221 (c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Each applicant shall attach to its notice of appearance a remittance of $6,760 as a hearing fee as required by Section 1.1104 of the Commission's Rules.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a) (2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and and in manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman, Chief
Video Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-453

In the Matter of

Amendment of Section 73.202(b), RM-6851
Table of Allotments,
FM Broadcast Stations.
(Hampton, Arkansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1990; Released: October 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 4 FCC Rcd 7538 (1989), issued in response to a petition filed by Southern Arkansas Radio (petitioner), licensee of Station KKOL(FM), Channel 296A, Hampton, Arkansas, proposing the substitution of Channel 293C3 for Channel 296A and modification of its license to specify operation on the higher powered channel. Petitioner filed supporting comments in response to the *Notice*. Opposing comments were filed on behalf of Congressman Beryl Anthony, Jr.[1] No other comments were received.

2. As indicated in the *Notice*, Channel 293C3 can be allotted to Hampton, Arkansas, at the petitioner's suggested site, which is 19.4 kilometers (12.1 miles) east[2] of the community, consistent with the minimum distance separation requirements of the Commission's Rules.

3. In view of the above, we believe the public interest would be served by substituting Channel 293C3 for Channel 296A at Hampton, Arkansas, since it would provide an expanded coverage FM service to the community. Therefore, in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of Southern Arkansas Radio, to specify operation on Channel 293C3 in lieu of Channel 296A, as requested. [3]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Hampton, Arkansas	293C3

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license issued to Southern Arkansas Radio for Station KKOL(FM), IS MODIFIED effective **November 26, 1990,** to specify operation on Channel 293C3 in lieu of Channel 296A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Congressman Anthony's comments question petitioner's fitness to remain a broadcast licensee based upon alleged violations of the Communications Act and the Commission's Rules, with respect to political broadcasting and the maintenance of public inspection files. In this regard, we note that Congressman Anthony's comments regarding petitioner's alleged infractions of the Commission's Rules were addressed by our Enforcement Division in a letter dated July 16, 1990. *See* 5 FCC Rcd 4643 (1990). Moreover, although the allegations presented by Congressman Anthony are of concern to the Commission, a licensee's legal qualifications to remain a broadcast licensee are more appropriately raised at the time of license renewal, rather than in the rule making context.

[2] Coordinates at the petitioner's specified site for Channel 293C3 at Hampton are 33-35-00 and 92-16-00.

[3] Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-308

In the Matter of

Amendment of Section 73.606(b), RM-5233
Table of Allotments,
TV Broadcast Stations.
(Nogales, Arizona)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1990; Released: October 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 51 Fed. Reg. 26562, published July 24, 1986, issued in response to a joint petition for rule making filed on behalf of Mountain States Broadcasting (petitioner)[1] and the City of Nogales ("City"), proposing the allotment of UHF television Channel 66 to Nogales, Arizona, as that community's first commercial television broadcast service.[2] Petitioner and City filed comments in response to the *Notice*. May Broadcasting Company ("May") and the Roman Catholic Church of the Diocese of Tucson ("Diocese") each filed comments. [3] Petitioner filed additional comments.

2. Petitioner's additional comments request withdrawal of the joint rule making proposal without prejudice to the possibility of refiling at a later date. Therefore, in accordance with Commission policy, we will grant petitioner's request for withdrawal. *See Montgomery, AL*, 5 FCC Rcd 4034 (1990), and *Grundy Center, IA*, 4 FCC Rcd 1275 (1989). In view of our determination, we need not discuss the comments filed in this proceeding by May and the Diocese.

3. Accordingly, IT IS ORDERED, That the joint petition for rule making filed on behalf of Mountain States Broadcasting and the City of Nogales (RM-5233), seeking the allotment of UHF television Channel 66 to Nogales, Arizona, IS DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Petitioner is the licensee of television Station KMSB-TV, Channel 11, which is allotted to Tucson-Nogales but licensed to the latter community.

[2] As indicated in the *Notice*, petitioner stated its intention to operate Channel 66 as a satellite of its Station KMSB-TV, if allotted.

[3] At the time the comments were filed, May was the licensee of television Station KGUN-TV, Channel 9, Tucson, and the Diocese was the licensee of television Station KDTU-TV (now KTTU-TV), Channel 18, Tucson. Both stations were subsequently sold.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-519

In the Matter of

Amendment of Section 73.202(b), RM-6856
Table of Allotments,
FM Broadcast Stations.
(West Rutland, Vermont)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1990; Released: October 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 8260 (1989), issued in response to a petition filed by Brian Dodge (petitioner), proposing the substitution of FM Channel 298C3 for Channel 298A at West Rutland, Vermont. Petitioner also requested modification of his construction permit for Station WVNH(FM), Channel 298A, to specify operation on the new channel. Petitioner filed supporting comments in which he reaffirmed his interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 298C3 for Channel 298A at West Rutland, Vermont, since it would provide the community with a wide coverage FM station. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.[1] Since West Rutland is located within 320 kilometers (200 miles) of the U.S.- Canadian border, concurrence of the Canadian government has been obtained. In addition, we are modifying the construction permit for Station WVNH(FM), West Rutland, Vermont, to specify operation on Channel 298C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
West Rutland, Vermont	298C3

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit of Station WVNH(FM), West Rutland, Vermont, IS MODIFIED to specify operation on Channel 298C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 298C3 are 43-39-40 and 72-53-25. Since this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the permittee may avail himself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-198

In the Matter of

Amendment of Section 73.202(b), RM-7135
Table of Allotments,
FM Broadcast Stations.
(LeRoy, Illinois)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of McLean County Broadcasters, Inc., (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 5 FCC Rcd 2586 (1990), proposing the substitution of Channel 281B for Channel 281B1 at Leroy, Illinois, and the modification of its permit for Station WRXZ(FM) (formerly Station WMLA(FM)) to specify operation on the higher powered channel. Petitioner filed comments restating its intention to apply for Channel 281B, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 281B for Channel 281B1 at LeRoy, Illinois, since it would provide the community with an expanded coverage area FM channel. Channel 281B can be allotted to LeRoy in compliance with the Commission's minimum distance separation requirements with a site restriction 29.0 kilometers (18 miles) northeast,[1] in order to avoid a short-spacing to a construction permit for Station WCBH, Channel 282B1, Casey, Illinois, and the licensed sites of Station WJMK(FM), Channel 282B, Chicago, Illinois, and Station WKKX(FM), Channel 281C2, Jerseyville, Illinois. In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the construction permit of Station WRXZ(FM) to specify operation on Channel 281B.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
LeRoy, Illinois	281B

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station WRXZ(FM), LeRoy, Illinois, IS MODIFIED, to specify operation on Channel 281B in lieu of Channel 281B1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 281B at LeRoy are North Latitude 40-30-10 and West Longitude 88-28-59.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-197

In the Matter of

Amendment of Section 73.202(b), RM-7132
Table of Allotments,
FM Broadcast Stations.
(Arcola, Illinois)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1990; Released: October 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Walnut Point Broadcasters (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 2584 (1990), proposing the allotment of Channel 300A to Arcola, Illinois. Petitioner filed comments stating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 300A to Arcola, Illinois, since it could provide that community with its first local broadcast service. Channel 300A can be allotted to Arcola in compliance with the Commission's minimum distance separation requirements without a site restriction.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 26, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Arcola, Illinois	300A

4. The window period for filing applications will open on **November 27, 1990,** and close on **December 27, 1990.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 39-41-00 and West Longitude 88-18-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-432

In the Matter of

Amendment of Section 73.202(b), RM-6795
Table of Allotments,
FM Broadcast Stations.
(Denmark, South Carolina)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 12, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Hugh David Jett d/b/a Denmark Communications (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 7112 (1989), proposing the allotment of Channel 239A to Denmark, South Carolina, as the community's first local FM service. Petitioner filed comments withdrawing his intention to apply for the channel, if allotted. No other comments were received.

2. As stated in the Appendix to the *Notice*, continuing interest is required before a channel will be allotted to a community. In light of petitioner's withdrawal of interest and the fact that no other party expressed such an intent, we will grant petitioner's request to dismiss his petition for rule making.

3. Accordingly, IT IS ORDERED, That the petition of Hugh David Jett d/b/a Denmark Communications to allot Channel 239A to Denmark, South Carolina, IS DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-426

In re Applications of

JOSEPH R. SOUCISE & BENJAMIN L. MEVORACH A GENERAL PARTNERSHIP (hereafter "Soucise & Mevorach")	File No. BPH-890119MI
ETTA M. DODGE (hereafter "Dodge")	File No. BPH-890119MJ
SEBAGO BROADCASTING COMPANY (hereafter "Sebago")	File No. BPH-890119MS

For Construction Permit
for a New FM Station on Channel 294A
in North Windham, Maine

HEARING DESIGNATION ORDER

Adopted: September 13, 1990; Released: October 11, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Sebago*. 47 C.F.R. § 1.65 requires applicants to timely amend their applications so as to keep them substantially complete and accurate with respect to broadcast interests acquired subsequent to the initial filing. Staff review of the Commission's ownership files has revealed that applicant Sebago has been remiss in its obligation under 47 C.F.R. § 1.65.[1] Therefore, Sebago will be ordered to file an amendment within 30 days with the Presiding Administrative Law Judge updating its application with respect to all broadcast interests, or an appropriate issue will be specified by the Judge.

3. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicants here have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Soucise & Mevorach, Dodge and Sebago would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Soucise & Mevorach, Dodge and Sebago would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That Sebago shall be ordered to file an amendment within 30 days with the presiding Administrative Law Judge updating its application with respect to all broadcast interests held by its principals to the application.

7. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

8. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] Commission records reveal that since the filing of this application, A. Wray Fitch, III, principal of Sebago, has had an application dismissed. He is 100% owner of Monhegan Broadcasting Company, which was an applicant for Channel 295B in Thomaston, Maine (File No. BPH-880208MO). This application was dismissed on April 19, 1990.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NEW YORK TELEPHONE CO. 38022

NEW ENGLAND TELEPHONE AND TELEGRAPH CO.

Apparent Violations of the Commission's Rules and Policies Governing Transactions with Affiliates

ORDER

Adopted: October 3, 1990; Released: October 4, 1990

By the Commission: Commissioner Barrett concurring and issuing a statement.

1. On February 8, 1990, this Commission initiated an enforcement proceeding against the NYNEX Telephone Companies[1] for apparent violations of the Commission's rules and policies governing transactions between regulated telephone companies and their nonregulated affiliates.[2] The *Order to Show Cause* advised the NYNEX Telephone Companies that they apparently had violated the Commission's affiliate transaction and other accounting rules in connection with their accounting of purchases of goods and services from their corporate affiliate, NYNEX Materiel Enterprises Co ("MECO"). The NYNEX Telephone Companies responded to the *Order to Show Cause*, denying that they had committed any violations with respect to their transactions with MECO.

2. The Commission and the NYNEX Telephone Companies have reached an agreement that would resolve these matters, the terms and conditions of which are contained in the attached Consent Decree.

3. We have reviewed the terms of the Consent Decree and evaluated the circumstances of this case. We believe that the public interest would be served by approving the Consent Decree, the terms of which are hereby incorporated herein by reference.

4. Accordingly, IT IS ORDERED, that the Consent Decree, incorporated by reference herein, IS HEREBY ADOPTED and that the Secretary shall sign such Consent Decree on behalf of the Commission.

5. IT IS FURTHER ORDERED that this proceeding against the NYNEX Telephone Companies IS HEREBY TERMINATED. [3]

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] New York Telephone Co. and New England Telephone and Telegraph Co.

[2] *See* New York Telephone Co. and New England Telephone and Telegraph Co., Apparent Violations of the Commission's Rules and Policies Governing Transactions with Affiliates, Order to Show Cause and Notice of Apparent Liability for Forfeitures, 5 FCC Rcd 866 (1990) (*Order to Show Cause*).

[3] Although the Commission did not seek public comment in this proceeding, Scott J. Rafferty, pursuant to 47 C.F.R. § 1.41 (1989), filed an informal request that the Commission "Affirm NYNEX's Liability for Forfeitures." In the alternative, Mr. Rafferty requested that the Commission allow a thirty day period for comment on the audit report and NYNEX's response. We have concluded that the public interest would best be served by entering into the Consent Decree rather than continuing the enforcement proceeding. Accordingly, Mr. Rafferty's informal request is hereby denied.

ATTACHMENT

In the Matter of

NEW YORK TELEPHONE CO.

NEW ENGLAND TELEPHONE AND TELEGRAPH CO.

Apparent Violations of the Commission's Rules and Policies Governing Transactions with Affiliates

CONSENT DECREE

1. On February 8, 1990, the Federal Communications Commission (the "Commission") released an *Order to Show Cause and Notice of Apparent Liability for Forfeitures*[1] initiating enforcement proceedings against New York Telephone Company and New England Telephone and Telegraph Company ("NYT" and "NET," respectively; the "NYNEX Telephone Companies" or "NTCs," collectively). The *Order to Show Cause* concerned the purchase of goods and services by the NTCs from their affiliate NYNEX Materiel Enterprises Company ("MECO") during the period from 1984 to December 27, 1988.

2. In the *Order to Show Cause*, the Commission tentatively concluded the NTCs had apparently paid and booked charges by MECO that were excessive because the charges included profits to MECO that exceeded the NTCs' prescribed interstate rate of return. The Commission tentatively concluded that apparent violations of the Communications Act and Commission rules and policy had occurred, which it described as follows:

(i) From 1984 to April 3, 1987, the NTCs apparently failed to comply with an earnings limitation policy announced by the Commission in CC Docket No. 19129.[2] (*Order to Show Cause*, 5 FCC Rcd at 869-70, paras. 23, 25.) According to the *Order to Show Cause*, "[t]his policy, implemented through the ratemaking process, measured the reasonableness of prices on transactions between affiliates by reference to the prescribed rate of return of the regulated enterprise." (*Id.*, 5 FCC Rcd at 867, para. 6.)

(ii) From 1984 to January 1, 1988, the NTCs recorded the full amount of MECO charges in their regulated accounts in apparent violation of Section 31.01-2(c) of the Commission's rules. [3] That section provided that "[a]ll charges to [Part 31 accounts] shall be just and reasonable and any payments by the company in excess of such just and reasonable charges shall be included in [a below-the-line account]." (*Id.*, 5 FCC Rcd at 869-70, paras. 24, 25.)

(iii) From April 3, 1987, to January 1, 1988, the NTCs apparently violated Section 31.01-11 of the Commission's rules,[4] which set forth "accounting requirements for recording transactions between a regulated carrier and its nonregulated affiliate on the carrier's regulated books of account." (*Id.*, 5 FCC Rcd at 867, 869-70, paras. 8, 25, 27.)

(iv) From January 1, 1988, to December 27, 1988, the NTCs apparently violated Section 32.27 of the Commission's rules,[5] by failing to record individual capital and expense account balances for purchases from MECO at the prescribed rate of return. (*Id.*, 5 FCC Rcd at 869-70, paras. 25, 27, 29.)

(v) From 1984 to December 27, 1988, the NTCs apparently violated Section 201(b) of the Communications Act.[6] That section proscribes unjust or unreasonable charges and practices. (*Id.*, 5 FCC Rcd at 866, 869-70, paras. 2, 24, 25.)

3. The *Order to Show Cause* accordingly directed the NTCs to show cause why they should not be required to do the following:

(i) Reduce capital account balances by $32.6 million to eliminate "the artificially inflated portion of previously capitalized plant and equipment still reflected on [the NTCs'] regulated books" (*Id.*, 5 FCC Rcd at 870, paras. 30, 31);

(ii) Make a one-time reduction to interstate revenue requirements in the 1990 annual access charge tariff filings in the amount of $35.5 million, to refund to ratepayers "unreasonable rates reflecting improper capital costs and expense charges recorded by [the NTCs] on their regulated books of account" arising from the NTCs' accounting for MECO charges in prior years (*Id.*, 5 FCC Rcd at 870-71, paras. 32, 33);

(iii) Adjust their 1989 Annual Reports Form M to correct inaccurate Form M information submitted in 1987 and 1988 as a result of improper accounting for MECO charges (*Id.*, 5 FCC Rcd at 871, para. 34); and

(iv) Pay forfeitures in the amount of $1,419,000 for failing to account for MECO transactions as required by Sections 31.01-11, 32.27 and 31.01-2(c) of the Commission's rules from February 8, 1985, through December 27, 1988 (*Id.*, 5 FCC Rcd at 871, para. 35).

4. With regard to the proposed forfeitures, the Commission has taken the position that forfeitures may be imposed by the Commission pursuant to its authority under Section 220(d) of the Communications Act regardless of whether the alleged violation of the Commission's rules by the NTCs was knowing and willful. The NTCs have taken the position that Section 220(d) permits the Commission to impose forfeitures only where a carrier has willfully and knowingly violated the Commission's rules and that the NTCs did not willfully and knowingly violate the Commission's rules. With regard to the proposed refunds, the Commission has taken the position that such refunds may be ordered pursuant to its authority under various sections of the Communications Act. The NTCs have taken the position that the Commission may not require refunds in any circumstances and *a fortiori* may not require them unless they are necessary to reduce carrier earnings to authorized rate of return levels. This Consent Decree is without prejudice to the parties' respective views of these issues.

5. The Commission and the NTCs agree that the expeditious resolution of this proceeding in accordance with the terms of this Consent Decree is in the best interests of the public and NTCs' ratepayers.

6. Accordingly, without admitting any wrongdoing or violations, the NTCs agree to the following in consideration of the Commission's agreement to terminate this proceeding on the terms set forth in this Consent Decree:

(i) First, the NTCs agree to reduce their capital account balances on their regulated books by $32.6 million within thirty days of the date on which the Commission releases an order adopting this Consent Decree.

(ii) Second, the NTCs agree to make voluntary one-time reductions to interstate revenue requirements in the amount of $35.5 million. The NTCs agree to implement such reductions by filing revised access tariffs within thirty days of the date on which the Commission releases an order adopting this Consent Decree. These tariff revisions must be made on 35 days notice.

(iii) Third, the NTCs agree to make voluntary adjustments to the 1990 Annual Reports Form M, relating to the NTCs' accounting for MECO charges, which reflect in full the provisions of this Consent Decree.

(iv) Fourth, the NTCs agree to make voluntary contributions to the United States Treasury, without further protest, or recourse to a trial *de novo*, in the amount of $709,500 each, for a total of $1,419,000, within five days of the date on which the Commission releases an order adopting this Consent Decree. The NTCs agree that no portion of such payments shall be included in net income determinations for ratemaking purposes, and that such payments shall be recorded in Account 7370, Special Charges.

7. In light of the NTCs' agreement stated in paragraph 6 above, and in express reliance thereon, the Commission agrees to issue an order formally adopting this Consent Decree (the "Consent Decree Order") and terminating all proceedings before the Commission arising from the *Order to Show Cause* and the underlying Common Carrier Bureau audit. The Commission further agrees that this Consent Decree serves to resolve all issues now pending or which may be brought before the Commission arising from matters that are the subject of the *Order to Show Cause* and underlying audit. The Commission agrees that it will not institute new proceedings of any kind arising out of conduct on which the *Order to Show Cause* and underlying audit are based or other conduct associated with those matters and occurring during the time period covered by the *Order to Show Cause* and underlying audit.

8. Agreement by the Commission to this Consent Decree shall constitute a decision to terminate this proceeding without any finding of wrongdoing, violations or liability on the part of the NTCs, or of necessity for sanctions against the NTCs. Moreover, this Consent Decree shall not be interpreted as resolving the issue whether a "willful and knowing" violation of a Commission rule is prerequisite to imposition of forfeitures under Section 220(d) of the Act, nor shall this Consent Decree be interpreted as resolving the issue whether the Commission has authority under the Communications Act to order refunds when a carrier's rates produce returns below authorized levels. The Commission agrees that the tentative conclusions contained in the *Order to Show Cause* shall not be used against the NTCs or any of their affiliates in any other current or future proceeding before the Commission. The Commission further agrees that the conduct which was the subject of, and occurred during the time period covered by the *Order to Show Cause* and underlying audit shall not be used against the NTCs or any of their affiliates in any other current or future proceeding before the Commission. It is intended and understood by the Commission and the NTCs that this Consent Decree does not constitute an adjudication of any factual or legal issue raised in this proceeding or in the *Order to Show Cause* and underlying audit; that the NTCs or any of their affiliates shall not be precluded or estopped from subsequently litigating any and all of these issues, *de novo*, in any other forum, except as expressly provided herein; and that this Consent Decree and a Consent Decree Order may not be used in any fashion by any party to this Agreement in any legal proceeding, except as expressly provided herein or as mutually agreed to by the parties to this Agreement.

9. The NTCs admit the jurisdiction of the Commission over them and over the subject matter of this proceeding for the purposes of this Consent Decree and a Consent Decree Order.

10. The NTCs waive any rights they may have to appeal a Consent Decree Order having the provisions described herein and will not engage in conduct inconsistent with the terms of this Consent Decree.

11. The NTCs agree that any violation of a Consent Decree Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

12. The Commission and the NTCs agree that the effectiveness of this Consent Decree is expressly contingent upon termination of this proceeding, issuance of a Consent Decree Order as described herein, and the NTCs' compliance with the terms of this Consent Decree. If the Consent Decree is not signed by the Commission and the NTCs or is otherwise rendered invalid, it shall become null and void and shall not become part of the record in this proceeding.

13. If the Commission brings an action in United States District Court to enforce the terms of a Consent Decree Order, the NTCs agree that they will not contest the validity of the order, and will consent to a judgment incorporating the terms of this Consent Decree.

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTES TO CONSENT DECREE

[1] New York Telephone Co. and New England Telephone and Telegraph Co., Apparent Violations of the Commission's Rules and Policies Governing Transactions with Affiliates, 5 FCC Rcd 866 (1990) (*Order to Show Cause*).

[2] AT&T, Charges for Interstate Telephone Service, Docket No. 19129 (Phase II), 64 FCC 2d 1 (1977), *reconsideration*, 67 FCC 2d 1429 (1978).

[3] 47 C.F.R. § 31.01-2(c) (1987).

[4] 47 C.F.R. § 31.01-11 (1987), *subsequently recodified at* 47 C.F.R. § 32.27 (1988).

[5] 75 C.F.R. § 32.27 (1989).

[6] 47 U.S.C. § 201(b).

CONCURRING STATEMENT OF COMMISSIONER ANDREW C. BARRETT

Re: New York Telephone Company New England Telephone and Telegraph Co. Apparent Violations of the Commission's Rules and Policies Governing Transactions with Affiliates

In my opinion, there is sufficient evidence of wrongdoing to find that the New York Telephone Company and the New England Telephone and Telegraph Company (NYNEX) violated the Commission's rules regarding transactions between telephone companies and their nonregulated affiliates. The record demonstrates that NYNEX Material Enterprises Co. (MECO) overcharged NYNEX on the sale of goods and services. Were I the lone Commissioner, I would have adjudicated this matter to resolve the guilt or innocence of NYNEX. In this Order, we leave open that question. I am not convinced that as a matter of principle, we should not attempt to resolve whether NYNEX violated our rules and policies in its dealings with MECO. I recognize that in this case, NYNEX has challenged the Commission's authority and our ability to win on every issue in court. I think the Commission was right in adoption of the *Order to Show Cause* and that we could have succeeded in court on these issues. I have faith in the Commission's outstanding litigation staff, but I also adknowledge the benefits of expeditious resolution of this matter.

In light of the time and Commission resource savings engendered by accepting the Consent Decree, I reluctantly agree with my colleagues to adopt this Order. I concur with the action of the Commission in adopting this Consent decree because the Consent Decree secures for interstate ratepayers the full benefits embodied in the remedies of the *Order to Show Cause* and provides for a voluntary contribution to the United States treasury in the amount of $1.49 million. These requirements contained in the Consent Decree should not be taken lightly.

I am hopeful that this Order sends the correct message to those this Commission regulates. It should signal to other companies that if they violate our rules, they should be prepared to pay the penalty. Finally, the ratepaying public should continue to have faith that this Commission will enforce our rules and policies in support of their interest.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 88-373

In the Matter of
Amendment of Part 90 RM-6276
of the Commission's Rules
to Permit Business Radio
Use of Certain Channels
in the 150 MHz Band

ERRATUM

Released: September 21, 1990

1. On July 30, 1990, the Commission released a *Memorandum Opinion and Order on Reconsideration* (FCC 90-253) in the above captioned proceeding. A summary of this document including the rules adopted in this proceeding were published in the Federal Register on August 3, 1990 (55 Fed. Reg. 31598).

2. A review of the *Memorandum Opinion and Order on Reconsideration* and the Federal Register revealed several editorial errors. Accordingly, this Erratum amends Section 90.75(b), as shown in the Appendix, to change the Class of station(s) to Base or mobile for the frequencies 157.560 and 157.620, and to Mobile for the frequencies 157.575 and 157.635 MHz. Section 90.555(b) is amended to add the Business Radio Service (IB) to the entry for 157.560 MHz.

3. For further information concerning this Erratum, contact Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION

Richard J. Shiben
Chief, Land Mobile and
Microwave Division

APPENDIX

47 C.F.R. Part 90 is amended as follows:

PART 90 PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 C.F.R. § 90.75(b) is amended by revising the Class of station(s) entry in the frequency table for the frequencies 157.560, 157.575, 157.605, 157.620, 157.635 and 157.665 MHz to read as follows:

§90.75 Business Radio Service.

* * * * *

(b) * * *

Business Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
	* * * * *	
157.560	Base or mobile	9
157.575	Mobile	1,9
157.605	Mobile	1,9
	* * * * *	
157.620	Base or mobile	9
157.635	Mobile	1,9
157.665	Mobile	1,9

* * * * *

3. 47 C.F.R. §90.555(b) is amended by adding IB to the Services entry for frequency 157.560 MHz in the combined frequency list.

§ 90.555 Combined frequency listing.

* * * * *

(b) * * *

Frequency	Services	Special limitations
	* * * * *	
157.560	IB, LX	LX within SMAs over 50,000 pop.

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-267

In the Matter of

Review of the Technical
Assignment Criteria for the
AM Broadcast Service

ORDER

Adopted: October 4, 1990; Released: October 4, 1990

By the Chief, Mass Media Bureau:

1. On July 18, 1990, the Commission released a Notice of Proposed Rule Making (NPRM) in MM Docket 87-267 that proposes to revise the AM technical standards to bring about a reduction of interference in the existing AM band and proposes a means of implementing the expanded (1605kHz-1705kHz) AM band that became available for use on July 1, 1990.[1] The deadlines for filing comments and reply comments are currently October 15, 1990 and November 14, 1990, respectively. Non-binding letters of intent to migrate to the expanded AM band are currently due to be filed October 15, 1990.[2]

2. On September 26, 1990, a request for extension of these deadlines was filed by the Association of Federal Communications Consulting Engineers (AFCCE). That request asks for a sixty (60) day extension of the October 15, 1990, and November 14, 1990, comment and reply comment filing dates.

3. In support of its request for extension of the filing deadlines, the AFCCE argues that, given the complexity of the various proposed changes to the AM technical rules, additional time is required to perform the requisite analyses necessary for developing a comprehensive response.

4. While we agree with AFCCE that many of the proposed changes to our AM rules involve complex technical matters, we nevertheless believe that sufficient and thorough analyses of these proposals can be accomplished within an additional 30 day period.

5. Accordingly, IT IS ORDERED THAT the request to extend the comment and reply comment dates filed by the Association of Federal Communications Consulting Engineers IS GRANTED TO THE EXTENT INDICATED HEREIN. The dates for filing comments and reply comments on the NPRM ARE EXTENDED to November 16, 1990 and December 17, 1990, respectively. On our own motion, the deadline for filing non-binding letters of intent to migrate to the expanded band IS EXTENDED to November 16, 1990. No further extension of these dates is contemplated.

6. This action is taken pursuant to authority found in Section 4(i) and 303(r) of the Communications Act of 1934, as amended and Sections 0.204(b), 0.283, 1.46 and 1.45 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

FOOTNOTES

[1] FCC 90-136, adopted April 12, 1990, 5 FCC Rcd. 4381 (1990).
[2] 55 Fed. Reg. 31607 (August 3, 1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Request for Amendment of the Commission's Rules Regarding Conducted Emissions of Products Which Use Carrier Current for Intra-Building Communications — RM-7296

ORDER EXTENDING TIME TO FILE COMMENTS

Adopted: October 4, 1990; Released: October 5, 1990

By the Office of Engineering and Technology:

1. An Order Accepting Late-Filed Comments in the above proceeding was adopted by the Commission on September 5, 1990, and released on September 6, 1990. Comments on the late-filed comments in this proceeding are due on October 6, 1990.

2. Since the release of this item, the Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") has filed with the Commission a motion requesting an extension of the time to file comments. EIA/CEG states that additional time is needed because extensive interference tests must be conducted and the results evaluated in order to properly respond to the late-filed comments.

3. Because of the testing and analysis which must be accomplished, as well as our desire to have a fully developed record before us, it has been determined that an extension of the comment period is appropriate. Accordingly, IT IS ORDERED, pursuant to the delegated authority contained in 47 CFR 0.241(a)(5), that the period of time for the filing of comments in the above proceeding is extended until **November 20, 1990.**

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Liability for Forfeiture of

RADIO & ELECTRONIC COMMUNICATIONS, INC. File No. 63500-90-20-RPS

Notice of Apparent Liability for Forfeiture for operating a facility in an unauthorized manner with respect to Station KNKD219 in the Public Mobile Service at Pensacola, Florida

MEMORANDUM OPINION AND ORDER

Adopted: October 4, 1990; Released: October 16, 1990

By the Chief, Mobile Services Division:

1. On July 3, 1990, the Mobile Services Division ("MSD") issued a Notice of Apparent Liability for Forfeiture (" *NALF* ") to Radio & Electronic Communications, Inc. ("Radio & Electronics"), finding that an apparent violation of Section 22.3 of the Commission's Rules had occurred for operating Station KNKD219 at Pensacola, Florida, in an unauthorized manner, and assessed a forfeiture in the amount of $3,650.00.

2. Radio & Electronics has taken no action in response to the *NALF*, and the $3,650.00 forfeiture has remained unpaid. As a result, Radio & Electronics is hereby being ordered to pay $3,650.00.

ORDERING PARAGRAPHS

3. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80(f)(4) of the Commission's Rules, 47 C.F.R. §1.80(f)(4), IT IS ORDERED that Radio & Electronics Communications, Inc. FORFEIT to the United States the sum of Three Thousand Six Hundred Fifty Dollars ($3,650.00) for the violation of Section 22.3 of the Commission's Rules. Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission payable to the order of the Federal Communications Commission within thirty (30) days of the release of this Order to: Federal Communications Commission, Fee Section, Finance Branch, P.O. Box 19209, Washington, DC 20036.

4. IT IS FURTHER ORDERED that if said forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act, as amended, 47 U.S.C. § 504(a).

5. IT IS FURTHER ORDERED that a copy of this Order BE SENT to Radio & Electronics Communications, Inc. by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Liability for Forfeiture of

RADIO RELAY CORP.-MICHIGAN — File No. 63500-89-16-BMW

Notice of Apparent Liability for Forfeiture for failure to maintain tower of Station KQC884 in the Public Mobile Service at Novi, Michigan

MEMORANDUM OPINION AND ORDER

Adopted: October 5, 1990; Released: October 16, 1990

By the Chief, Mobile Services Division:

1. Radio Relay Corp.-Michigan ("Radio Relay") has filed a "Petition for Reduction of Forfeiture" of the $9,950.00 forfeiture imposed by the Mobile Services Division ("MSD") in a "Notice of Apparent Liability for Forfeiture" (*"NALF"*) issued May 16, 1989.

I. BACKGROUND

2. On December 22, 1988, the Commission sent an Official Notice of Violation to Radio Relay, stating that Radio Relay had violated Sections 22.109(a)(1)(2) and (b) and Sections 22.205(a)(1) and (b)(2) of the Commission's Rules[1] for: (1) failing to notify the nearest FAA flight service center that the top beacon on the tower of Station KQC884 failed; (2) failing to observe the tower lights at least once every 24 hours; and (3) failing to maintain required lighting. *See* Official Notice of Violation to Radio Relay from Irby C. Tallant, Jr. ("Tallant") of the Commission's Farmington Hills, Michigan Field Office (Dec. 22, 1988). The Official Notice pointed out that Commission staff observed the unlighted top beacon from December 5, 1988, through December 14, 1988, that Radio Relay was advised of the outage on December 14, 1988, and that the tower top beacon remained unlighted as of December 22, 1988.

3. On May 16, 1989, the MSD issued the *NALF*, stating that although Radio Relay is leasing space on the tower, it nevertheless is responsible for the proper maintenance of the marking and lighting on the tower pursuant to Part 17 of the Commission's Rules. Consequently, the MSD found that an apparent violation of Sections 22.109(a)(1)(2) and (b) and Sections 22.205(a) and (b)(2) had occurred and that the Commission considered these violations to be serious due to the potential threat to life and property. As a result, the MSD imposed a forfeiture of $9,950.00.

II. RADIO RELAY'S CONTENTIONS

4. Radio Relay states it does not dispute the facts underlying the *NALF* but claims mitigating circumstances justify reducing the forfeiture to $2,500.00. It acknowledges that it leases space on the Novi tower and although this does not excuse tower maintenance requirements, it explains the reason the violation was not promptly remedied. Radio Relay says that while it has access to the tower, it is not permitted to alter or repair it. Radio Relay asserts that on December 14, 1988, Mr. William C. Lovell ("Lovell"), a Radio Relay officer, instructed its Michigan technician to tell the FAA of the malfunctioning top beacon and that Lovell tried to contact the tower lessor, X-Mation Tool Company ("X-Mation"), to arrange for beacon replacement but found out later that day that since 1988, X-Mation was no longer the tower owner, even though Radio Relay paid rent to X-Mation for about one year after the sale.

5. Radio Relay contends it took several days to identify the new tower owner, several more days to reach that individual (who was involved in a lawsuit with X-Mation, further complicating the tower repairs), and another delay of approximately two weeks before the new owner replaced the top beacon. Radio Relay asserts that Lovell made numerous status checks during that time to expedite repairs and that on January 17, 1989, Lovell wrote to Tallant, advising that the beacon was repaired and that arrangements for future daily inspection requirements were made. Arguing that the circumstances are unusual and are unlikely to recur, Radio Relay claims it acted responsibly and was not negligent. It contrasts its behavior with that of a California licensee which, it says, owned two towers and was fined only $1,000.00 for a station logging discrepancy and $7,000.00 for dual tower lighting violations.[2] Radio Relay thus argues that because that licensee's forfeiture resulted in a fine (for one tower) of almost three thousand dollars less than the one assessed against Radio Relay and because of mitigating circumstances in the instant proceeding, a reduction of the forfeiture is warranted.

III. DISCUSSION

6. After carefully reviewing the facts and Radio Relay's assertions, we decline to grant its request for reduction of the forfeiture. A licensee is responsible for complying with Commission rules and is responsible for its own acts or omissions. *See, e.g., Lorain Community Broadcasting Co.*, 18 FCC 2d 686 (1969). As Radio Relay recognizes, a licensee's leasing of a tower does not absolve the licensee from its duty to ensure that it is at all times in compliance with Commission requirements involving antenna structures and operator and maintenance requirements.

7. Radio Relay offered no explanation at all involving the unlighted top beacon from December 5, 1988, through December 14, 1988. Furthermore, Radio Relay's failure to promptly correct the violations due to difficulty in ascertaining and dealing with the tower's owner does not alter the fact that unauthorized operation existed and that the violation continued over a period of time. Thus, that the violation, once brought to the licensee's attention, continued due to non-ownership of the tower does not persuade us to reduce the forfeiture. We have previously noted that

> "[t]he fact that the applicant's violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional. All that is necessary is that the licensee knew he was doing the act in question . . . ."

Mobile Radio Telephone & Paging Service, Inc., Mimeo No. 2397 (Com. Car. Bur., released Feb. 16, 1983). *See also* Section 312(f) of the Communications Act, as amended, which defines "willful".

8. We also find unavailing Radio Relay's reliance on the forfeiture assessed against the licensee in *Oro, supra*, to justify reducing its own forfeiture. The purpose of the Commission's rules regarding lighting and marking of antenna structures is to prescribe standards for the illumination and marking of those antenna structures which might constitute a risk to air navigation and safety. *See* Section 17.1 of the Commission's Rules. We reject Radio Relay's attempt to correlate the amounts of forfeitures that are imposed based upon the number of towers involved. In addition, the tower lights in the *Oro* case were extinguished for four days whereas Radio Relay's tower light was extinguished for approximately four weeks. [3] Commission records indicate that the tower involved in the proceeding before us is only 5.39 miles from Spencer Field Airport (address: 936 Wixon, Oakland, Michigan). We find that although Radio Relay admits it had access to the tower, it nonetheless chose to wait until the tower owner made the necessary repairs and in spite of the tower's proximity to the airport, the lengthy wait, which took several weeks longer than otherwise would have been the case if Radio Relay had made the repairs as soon as it realized the difficulty in locating the tower owner, was unnecessary and can not be condoned. The nature, circumstances, extent, and gravity of the prohibited acts, as well as Radio Relay's degree of culpability were already taken into account in setting the proposed forfeiture. *See* Section 503(b)(2)(B) of the Communications Act. The steps it took to rectify the situation were insufficient to justify a lower forfeiture.

9. As a result, we conclude that Radio Relay's asserted mitigating factors are insufficient to justify a reduction of forfeiture and, thus, we uphold the $9.500.00 forfeiture.

IV. ORDERING PARAGRAPHS

10. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80(f)(4) of the Commission's Rules, 47 C.F.R. § 1.80(f)(4), IT IS ORDERED that Radio Relay Corp.-Michigan FORFEIT to the United States the sum of Nine Thousand Five Hundred Dollars ($9,500.00) for the violations of Section 22.109(a)(1)(2) and (b) and Section 22.205(a)(1) and (b)(2) of the Commission's Rules. Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission within thirty (30) days of release of this Order to: Federal Communications Commission, Fee Section, Finance Branch, P.O. Box 19209, Washington, DC 20036.

11. IT IS FURTHER ORDERED that if said forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act, as amended, 47 U.S.C. § 504(a).

12. IT IS FURTHER ORDERED that a copy of this Order BE SENT to Radio Relay Corp.-Michigan, Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Section 22.109 pertains to antenna structures and Section 22.205 pertains to operator and maintenance requirements (*i.e.*, licensee's general responsibilty.)

[2] Radio Relay has attached *Public Notice*, Mimeo No. 3631 (released July 17, 1989). *See* Notice of Apparent Liability, dated June 7, 1989, to Oro Spanish Broadcasting Company, Inc., licensee of Station KIQI(AM) at San Francisco, California. Relay contends that although the Public Notice does not address the matter, it certainly appears that the logs were falsified. In actuality, the amount in the forfeiture letter was for $9,300.00. A forfeiture order, dated August 11, 1989, reduced the forfeiture amount to $9,000.00. Subsequently, the Commission rescinded the $1,000.00 forfeiture that was imposed for false logging entries because of ambiguities in the handwritten words "on/off" on the "tower lights" line of the log but upheld the $8,000.00 forfeiture for failing to light the radio towers. *See* Oro Spanish Broadcasting Company Inc., 5 FCC Rcd 833 (1990) (" *Oro* ").

[3] As earlier noted, the Official Notice of Violation indicated that the top beacon was observed unlighted from December 5, 1988, and remained so as of December 22, 1988. Radio Relay's own statements indicate that from the time it was first notified of the unlit beacon (on December 14, 1988) to the time of replacement of the light, the tower remained unlighted until approximately the beginning of January 1989. Petition for Reduction at 3.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-421

In re Applications of

SCIOTO BROADCASTERS, LIMITED PARTNERSHIP, *et al.*	File No. BPH-870515MU, *et al.*
MCCALL BROADCASTING, INC.	File No. BPH-8780515NU

For a New FM Station on
Channel 298A, Columbus, Ohio

ORDER

Adopted: September 26, 1990; Released: October 16, 1990

By the Commission:

1. By Order, FCC 89M-2132, released August 23, 1989, the ALJ dismissed McCall's application with prejudice for willful and repeated refusal to comply with his orders and submit to discovery. In a Decision, *Mid-Ohio/Capitol Communications Limited Partnership*, 4 FCC Rcd 8125 (Rev. Bd. 1989), the Review Board affirmed the dismissal. McCall appealed the Board's ruling to the Commission, which denied its application for review without comment. 5 FCC Rcd 3447 (1990). We now have before us a petition for reconsideration that McCall filed on July 6, 1990 and an opposition filed by Horace E. Perkins on July 18, 1990.

2. McCall contends that the dismissal of its application was improper because the discovery orders that it refused to obey pertained to issues that should not have been specified in the first place and that the ALJ should have resolved in its favor by summary decision. McCall raised essentially the same argument in its application for review. We indicated by our disposition of that pleading that we had found the argument to be without merit, and it gains nothing from repetition. *See WWIZ, Inc.*, 37 FCC 685 (1964), aff'd sub nom. *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965) (the Commission does not entertain reargument of matters that it has already considered). The only new matter that McCall presents now is the citation of a recent decision, *RKO General, Inc. (WHBQ-TV)*, 5 FCC Rcd 638 (1990),[1] in support of its reiterated contention that the ALJ should have granted the motion for summary decision. That contention is immaterial; the alleged errors in the ALJ's decision to enlarge the hearing issues and his denial of the motion for summary decision did not constitute a sufficient basis for McCall's refusal to obey lawful orders. Applicants do not have the prerogative of disobeying an ALJ's discovery orders merely because they believe that antecedent rulings were legally erroneous.

3. ACCORDINGLY, IT IS ORDERED that the petition for reconsideration filed on July 6, 1990 by McCall Broadcasting, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTE

[1] Based on the ALJ's findings following a full evidentiary hearing, the Commission concluded in *RKO General* that a principal had an appropriate basis for certifying an applicant's financial qualification at the time it filed its application. 5 FCC Rcd at 639 ¶ 11.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-309

In re Applications of

MONROE-LIVINGSTON RADIO ASSOCIATES — File No. BPH-870817MI

Mary Ann Hurlburt et al., d/b/a HFH COMMUNICATIONS ASSOCIATES — File No. BPH-870819NG

For Construction Permit for
New FM Station, Channel 297A,
Honeoye Falls, New York

MEMORANDUM OPINION AND ORDER

Adopted: October 2, 1990; Released: October 16, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. Before the Review Board is the *Initial Decision*, 5 FCC Rcd 3942 (1990) (I.D.) of Administrative Law Judge Joseph P. Gonzalez (ALJ) and a Joint Request for Approval of [Settlement] Agreement filed by both remaining parties to this proceeding, as well as a Petition for Leave to Amend (and attached amendment) filed September 24, 1990, and a Supplement filed September 28, 1990, by HFH Communications Associates (HFH).[1] The I.D. turned solely on comparative considerations of both applicants, and Monroe-Livingston Radio Associates (MLRA) was determined by the ALJ to be the best qualified to receive the construction permit.

2. However, rather than pursue this matter, both MLRA and HFH have elected not to file exceptions with the Board; instead, they propose to settle this proceeding by merging and forming a new entity, Honeoye Falls Radio, Incorporated (HFRI), to be the permittee in which the principals of MLRA and HFH would be shareholders (*i.e.*, MLRA general partner Linda Savage would own a 50% equity interest in HFRI, and the limited and general partners of HFH would own a 50% equity interest in the proposed new corporate permittee).

3. To achieve these goals, HFH has filed an amendment to its application, proposing to transfer its interests to HFRI. HFH principals Kimble and Hurlbut have promised to pay MLRA $10,000 upon approval of the proposed settlement agreement, and have also executed a promissory note to MLRA in the additional amount of $80,000. HFH and its principals have also agreed to assume all obligations due a former applicant (Sima Birach), whose application was dismissed pursuant to a settlement agreement approved by *Order*, FCC 89M-1088, released April 5, 1989, in the principal amount of $30,000. Birach has agreed to this assumption.

4. HFH has also agreed to assign to HFRI the "reasonable assurance" of its proposed transmitter site. The settlement agreement also provides that upon fulfillment of all obligations by HFH principals to MLRA, they may acquire MLRA principal Savage's interest in HFRI for $1.00, subject to prior Commission approval. Conversely, if HFH or its principals fail to meet any of the obligations due MLRA, then Savage may acquire the HFH equity interest in HFRI for $1.00, subject to prior Commission approval.

5. With its amendment to transfer the interests in HFH to a corporation (HFRI), in which the principals of HFH and MLRA will be shareholders, that applicant is fully qualified to construct and operate as proposed. Further, pursuant to Section 73.3525 of the Commission's Rules, 47 CFR §73.3525 (which implements 47 U.S.C. §311(c), as amended), the parties have submitted their proposed settlement agreement, accompanied by the required declarations indicating that their respective applications were filed in good faith and not for the purposes of reaching or carrying out a settlement agreement. The parties indicate that the proposed settlement agreement will be in the public interest, and that it will conserve the resources of the Commission and will expedite initiation of new FM broadcast service at Honeoye Falls, New York. In light of the foregoing, and in the absence of any basic qualifying issues extant against any party, we find no impediment to the amicable settlement of this proceeding. Further, the Commission's Mass Media Bureau supports this resolution of the proceeding.

6. ACCORDINGLY, IT IS ORDERED, That the Petition for Leave to Amend filed (on September 24, 1990, as supplemented September 28, 1990) by HFH Communications Associates to form a new corporate entity, Honeoye Falls Radio, Incorporated, to be the permittee herein IS GRANTED, and the amendment IS ACCEPTED; and,

7. IT IS FURTHER ORDERED, That the Joint Request for Approval of Agreement filed by the captioned parties IS GRANTED, and the attached settlement and merger agreement IS APPROVED; and,

8. IT IS FURTHER ORDERED, That the application of Monroe-Livingston Radio Associates (File No. BPH-870817MI), IS DISMISSED with prejudice, and the application of HFH Communications Associates (as amended to a new corporate entity, Honeoye Falls Radio, Incorporated) (File No. BPH-870819NG), for a new Class A FM facility at Honeoye Falls, New York, IS GRANTED; and,

9. IT IS FURTHER ORDERED, That the engineering amendment filed October 2, 1990 by HFH Communications Associates IS REFERRED to the Chief, Mass Media Bureau for appropriate disposition.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTE

[1] On this date (October 2, 1990) HFH also filed a proposed amendment to increase the effective radiated power of the facility to 6 kw and change transmitter sites. This proposed amendment must be processed by the Commission's Mass Media Bureau "upon whose expertise the Commission relies in matters of this nature." *Agape Broadcasting Foundation, Inc.* 2 FCC Rcd 5491 (Rev. Bd. 1987). The Board has no authority to process engineering amendments. *Silver Springs Communications*, 5 FCC Rcd 5284 (Rev. Bd. 1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-387

In re Applications of

ROXANNE GIVENS	File No. BPH-871202MC
MINNESOTA PUBLIC RADIO	File No. BPED-871203MC
NANCY JEAN PETERSON	File No. BPH-871203MF
SOUTHWEST SUBURBAN BROADCASTING, INC.	File No. BPH-871203MH
CRIMIEL COMMUNICATIONS ASSOCIATES LIMITED PARTNERSHIP	File No. BPH-871203MN
JH BROADCAST LIMITED PARTNERSHIP	File No. BPH-871203NF
ANNE M. COUNIHAN	File No. BPH-871203NQ
COVE COMMUNICATIONS, INC.	File No. BPH-871203NT

For Construction Permit for New FM Station, Channel 289A, Eden Prairie, Minnesota

MEMORANDUM OPINION AND ORDER

Adopted: October 2, 1990; Released: October 16, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. Before the Review Board is a Petition for Reconsideration filed October 1, 1990, by former applicant N. Walter Goins, seeking reconsideration of our *Memorandum Opinion and Order*, 5 FCC Rcd 5371 (Rev. Bd. 1990), denying Goins' appeal of his dismissal from this proceeding.[1]

2. Goins' petition for reconsideration will be dismissed because it is specifically precluded by three discrete provisions of the Commission's Rules: 47 CFR §1.102(b)(2) ("Petitions for reconsideration of interlocutory actions will not be entertained"); 47 CFR §1.106(a)(1) ("Petitions for reconsideration of [non-final] interlocutory actions will not be entertained"); and 47 CFR §1.291(c)(3) ("Petitions requesting reconsideration of an interlocutory ruling made by . . . the Review Board . . . will not be entertained"). *Hughes-Moore Associates, Inc.*, 5 FCC Rcd 5343 (Rev.Bd. 1990); *Weyburn Broadcasting Ltd.*, 5 FCC Rcd 1972 (Rev. Bd. 1990). Moreover, pursuant to 47 CFR §1.115(e)(1), further review of the Board's action may only be sought in the context of an application for review of a subsequent "final decision" in this proceeding. *See Valley Broadcasters*, Inc., FCC 83R-85, released October 21, 1983.

3. ACCORDINGLY, IT IS ORDERED, That the Conditional Request for Extension of Time filed October 1, 1990 by N. Walter Goins IS GRANTED; and,

4. IT IS FURTHER ORDERED, That the Petition for Reconsideration filed October 1, 1990 by N. Walter Goins IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTE

[1] On the same date, Goins also filed a pleading styled "Conditional Request for Extension of Time," which seeks additional time for Goins to file his petition. Goins claims therein that he had not timely received notice of the Board's action. This request will be granted. Additionally, pre-publication copies of this document will be mailed to the remaining parties and to N. Walter Goins at the address indicated in his petition: 931 Lakeshore Drive, Big Lake, Minnesota 55309.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-202

In the Matter of

Amendment of Section 73.202(b), RM-7134
Table of Allotments,
FM Broadcast Stations.
(Barstow, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 15, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 5 FCC Rcd 2542 (1990), issued in response to a petition filed on behalf of First American Communications Corp. (petitioner), licensee of Station KDUC(FM), Channel 232A, Barstow, California, proposing the substitution of Channel 232B1 for Channel 232A and the modification of its license accordingly. Petitioner filed comments in support of the proposal. No other comments were received.

2. As indicated in the *Notice*, Channel 232B1 can be allotted to Barstow, California, at the petitioner's present transmitter site,[1] consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules. Additionally, since Barstow is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence in the allotment by the Mexican government was obtained.

3. In view of the above, we believe the public interest would be served by substituting Channel 232B1 for Channel 232A at Barstow, California, since it would provide an expanded coverage FM service to the community. Therefore, in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying the license of Station KDUC(FM) to specify operation on Channel 232B1, as requested.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 29, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Barstow, California	232B1, 240A[2]

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license issued to First American Communications Corp. for Station KDUC(FM), Barstow, California, IS MODIFIED effective **November 29, 1990,** to specify operation on Channel 232B1 in lieu of Channel 232A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Coordinates at the licensed site of Station KDUC(FM) at Barstow are 34-58-15 and 117-02-22.

[2] Pending before the Commission is a proposal to substitute Channel 240B1 for Channel 240A at Barstow and to modify the permit for Station KXXZ(FM) accordingly. *See Notice of Proposed Rule Making*, 4 FCC Rcd 6210 (1989) in MM Docket No. 89-345.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-462

In the Matter of

Amendment of Section 73.606(b), RM-6852
Table of Allotments,
TV Broadcast Stations.
(Colorado Springs, Colorado)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 15, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 4 FCC Rcd 7571 (1989), issued in response to a petition filed on behalf of the University of Southern Colorado (petitioner), licensee of noncommercial educational television Station KTSC-TV, Channel *8, Pueblo, Colorado, proposing the allotment of UHF television Channel *66 to Colorado Springs, Colorado, as that community's first local noncommercial educational television service. Petitioner filed comments in response to the *Notice*. The Council for Public Television, Channel 6, Inc. ("CPT"), licensee of noncommercial educational television Station KRMA-TV, Channel *6, Denver, Colorado, filed opposing comments. Pikes Peak Broadcasting ("Pikes Peak"), licensee of television Station KRDO-TV, Channel 13, Colorado Springs, Colorado, filed comments and a counterproposal,[1] which was opposed by Sangre de Cristo Communications, Inc., licensee of television Station KOAA-TV, Channel 5, Pueblo, Colorado. Petitioner and CPT filed reply comments.

2. Petitioner's reply comments requested the dismissal of its petition for rule making, stating that it is no longer interested in pursuing the proposal. Therefore, and in accordance with Commission policy, we will grant petitioner's request for dismissal of its rule making proposal. *See Grundy Center, Iowa*, 4 FCC Rcd 1275 (1989). In light of our decision, we need not discuss the opposing comments filed in this proceeding.

3. Accordingly, IT IS ORDERED, That the petition for rule making filed on behalf of the University of Southern Colorado (RM-6852), seeking the allotment of UHF television Channel *66 to Colorado Springs, Colorado, IS DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The counterproposal was not accepted for consideration since it is not mutually exclusive with the instant proposal, and Pikes Peak failed to include a technical study to demonstrate compliance with the Commission's Rules. Consequently, it warrants no further consideration, and is hereby dismissed.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-13

In the Matter of

Amendment of Section 73.202(b),	RM-7090
Table of Allotments,	
FM Broadcast Stations.	
(White Hall, Arkansas)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 15, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 5 FCC Rcd 585 (1990), issued in response to a petition filed by Carl Jones (petitioner), proposing the allotment of Channel 283A to White Hall, Arkansas, as that community's first local broadcast service. Although petitioner failed to file supporting comments, an expression of interest was submitted on behalf of Brantley Broadcast Associates ("Brantley"). No other comments were received.

2. We believe the public interest would be served by allotting Channel 283A to White Hall, since it could provide a first local broadcast service to that community.

3. As stated in the *Notice*, Channel 283A can be allotted to White Hall in conformity with the minimum distance separation requirements of the Commission's Rules, provided the transmitter is located at least 6.0 kilometers (3.7 miles) east of the community[1] to avoid short-spacing to Channel 283A, Camden, Arkansas,[2] and to Station KMJX(FM), Channel 286C1, Conway, Arkansas. [3]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 29, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include the community listed below, as follows:

City	Channel No.
White Hall, Arkansas	283A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications on Channel 283A at White Hall, Arkansas, will open on **November 30, 1990,** and close on **December 31, 1990.**

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Coordinates used in this determination are 34-15-15 and 92-01-49. Since this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 CFR § 73.213(c).

[2] Coordinates used for Channel 283A at Camden, Arkansas, are 33-35-06 and 92-50-00.

[3] Coordinates at the licensed site of Station KMJX(FM) are 34-47-53 and 92-29-33.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-569

In the Matter of

Amendment of Section 73.202(b), RM-7025
Table of Allotments,
FM Broadcast Stations.
(Belle Chasse, Louisiana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 15, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 8591 (1989), issued in response to a petition filed by First Belle Chasse Media Group (petitioner), proposing the substitution of Channel 275C3 for Channel 275A at Belle Chasse, Louisiana. Petitioner also requested modification of its construction permit for Station KNOK(FM), Channel 275A, to specify operation on Channel 275C3. Petitioner filed supporting comments reaffirming its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 275C3 for Channel 275A at Belle Chasse, Louisiana, since it would provide the community with a wide coverage area FM station. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's specified site.[1] As requested, we are modifying the petitioner's construction permit for Station KNOK(FM), Channel 275A, Belle Chasse, Louisiana, to specify operation on Channel 275C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 29, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Belle Chasse, Louisiana	275C3

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station KNOK(FM), Belle Chasse, Louisiana, IS MODIFIED to specify operation on Channel 275C3, in lieu of Channel 275A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Andrew J. Rhodes, Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 275C3 are 29-52-06 and 89-53-38. Since this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the permittee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-568

In the Matter of

Amendment of Section 73.202(b), RM-7024
Table of Allotments,
FM Broadcast Stations.
(Clifton, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 15, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Bosque Broadcasting Corp. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 8538 (1989), proposing the substitution of Channel 277C3 for Channel 277A at Clifton, Texas, and the modification of its construction permit for Station KWOW(FM) to specify operation on the higher powered channel. Petitioner filed comments reiterating its intention to apply for Channel 277C3, if allotted to Clifton. No other comments were received.

2. We believe the public interest would be served by substituting Channel 277C3 for Channel 277A at Clifton, Texas, since it could enable Station KWOW(FM) to expand its coverage area. Channel 277C3 can be allotted to Clifton in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.7 kilometers (7.9 miles) east of the community to accommodate petitioner's desired transmitter site.[1] As proposed, we will modify petitioner's construction permit for Station KWOW(FM) to specify operation on Channel 277C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 29, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Clifton, Texas	277C3

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Bosque Broadcasting Corp. for Station KWOW(FM), Clifton, Texas, IS MODIFIED to specify operation on Channel 277C3, in lieu of Channel 277A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 277C3 at Clifton are North Latitude 31-47-30 and West Longitude 97-26-35. Because the petition which resulted in this allotment was filed prior to October 2, 1989, the permittee may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 C.F.R. §73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-474

In the Matter of

Amendment of Section 73.202(b), RM-6930
Table of Allotments,
FM Broadcast Stations.
(Brookings, South Dakota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 15, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Dakota Broadcasting, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 7853 (1989), proposing the substitution of Channel 229C1 for Channel 229C2 at Brookings, South Dakota, and the modification of its license for Station KGKG to specify the higher powered channel. Petitioner filed comments reiterating its intention to apply for Channel 229C1, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 229C1 for Channel 229C2 at Brookings, South Dakota, since it could enable Station KGKG to expand its coverage area. Channel 229C1 can be allotted to Brookings in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.8 kilometers (16.6 miles) west to avoid a short-spacing to Station KTSB, Channel 230C2 Sioux Center, Iowa, and to unoccupied but applied for Channel 230A at Granite Falls, Minnesota.[1] As proposed, we will also modify petitioner's license for Station KGKG to specify operation on Channel 229C1 in lieu of its present Channel 229C2.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 29, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Brookings, South Dakota	229C1

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Dakota Broadcasting, Inc., for Station KGKG, Brookings, South Dakota, IS MODIFIED to specify operation on Channel 229C1, in lieu of Channel 229C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 229C1 at Brookings are North Latitude 44-22-44 and West Longitude 97-06-54. Because the petition which resulted in this allotment was filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 C.F.R. §73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-19

In the Matter of

Amendment of Section 73.202(b), RM-7117
Table of Allotments,
FM Broadcast Stations.
(Yuma, Arizona)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 15, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 5 FCC Rcd 631 (1990), issued in response to a petition filed on behalf of UNO Broadcasting Corporation (petitioner), licensee of Station KTTI(FM), Channel 236C2, Yuma, Arizona, proposing the substitution of Channel 236C for Channel 236C2 and modification of its license to specify operation on the higher powered channel. Petitioner filed supporting comments in response to the *Notice*. No other comments were received.

2. As indicated in the *Notice*, Channel 236C can be allotted to Yuma, Arizona, at the petitioner's suggested site, which is 27.3 kilometers (16.9 miles) east of the community,[1] consistent with the minimum distance separation requirements of the Commission's Rules. Additionally, since Yuma is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence in the allotment by the Mexican government was obtained.

3. In view of the above, we believe the public interest would be served by substituting Channel 236C for Channel 236C2 at Yuma, Arizona, since it would provide a second expanded coverage FM service to the community. Therefore, in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of UNO Broadcasting Corporation to specify operation on Channel 236C in lieu of Channel 236C2, as requested.[2]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 29, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Yuma, Arizona	226C, 236C, 265A

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license issued to UNO Broadcasting Corporation for Station KTTI(FM) IS MODIFIED effective **November 29, 1990,** to specify operation on Channel 236C in lieu of Channel 236C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Coordinates at the petitioner's suggested site for Channel 236C at Yuma are 32-40-22 and 114-20-13.

[2] Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMSAT GENERAL CORPORATION — File No. 1299-DSS-ML-89

Application for authority to relocate the MARISAT F-1 Atlantic Ocean Region Satellite (KS-33)

and

Application for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease commercial space segment capacity to INMARSAT via MARISAT satellites in the Atlantic, Pacific and Indian Ocean Regions — File Nos. 1301-DSS-MISC-89, 1302-DSS-MISC-89, 1303-DSS-MISC-89

MEMORANDUM OPINION AND ORDER

Adopted: September 24, 1990; Released: October 16, 1990

By the Chief, Common Carrier Bureau:

1. COMSAT General Corporation (COMGEN)[1] requests authority to: (a) relocate its MARISAT F-1 Atlantic Ocean Region (AOR) satellite (KS-33) from 15° W.L. to 106° W.L., and (b) extend existing leases to the International Maritime Satellite Organization (INMARSAT) for commercial space segment capacity on the MARISAT satellites in the Atlantic, Pacific and Indian Ocean Regions, pursuant to Section 214 of the Communications Act of 1934, as amended. For the reasons discussed below, these requests are granted.

BACKGROUND

2. The MARISAT system consists of three operational satellites located in the Atlantic, Pacific and Indian Ocean Regions.[2] The MARISAT F-1 AOR satellite is located at 15° W.L.; the MARISAT Pacific Ocean Region (POR) satellite (KS-34) is located at 176.25° E.L.; and the MARISAT Indian Ocean Region (IOR) satellite (KS-35) is located at 72.5° E.L. The L-band and C-band segments of the MARISAT satellite system are currently leased to INMARSAT. The INMARSAT Council, Thirty-Second Session, authorized negotiations with COMGEN to extend INMARSAT's lease of commercial capacity on all three MARISAT satellites to December 31, 1992. [3] COMGEN also has agreements with the U.S. Navy to provide to it leased channel services in government UHF bands between 240 and 400 MHz through September 30, 1990 and with the United Kingdom (U.K.) Royal Navy to provide to it leased narrow band UHF capacity on the MARISAT AOR satellite through 1990.[4] The Commission authorized COMGEN, pursuant to Title III of the Communications Act of 1934, to operate individual transponders on the MARISAT system on the assigned frequencies concomitant with the actual provision of service under contract to INMARSAT, the U.S. Navy and the U.K. Royal Navy. This authorization is to expire no later than 3 a.m. (EST), December 31, 1990.[5]

3. COMGEN states that, after INMARSAT extends its lease of commercial capacity on all three MARISAT satellites, INMARSAT intends, in turn, to lease certain capacity on the MARISAT F-1 AOR satellite pursuant to INMARSAT's domestic lease policy. Under this policy, INMARSAT leases to Signatories to the organization space segment capacity which can be used only to provide domestic maritime, aeronautical or land-mobile satellite service. The INMARSAT Council, Thirty-Second Session, approved lease requests for capacity on the MARISAT F-1 AOR satellite from Teleglobe Canada (Teleglobe), Canada's Signatory to INMARSAT, and COMSAT World Systems Division (COMSAT-WSD), a division of Communications Satellite Corporation (COMSAT), the U.S. Signatory to INMARSAT. Teleglobe and COMSAT-WSD, in turn, have stated that they intend to lease the space segment capacity to mobile satellite service (MSS) carriers for domestic service within Canada and the U.S., respectively. Capacity on the MARISAT POR and IOR satellites that INMARSAT leases from COMGEN will be used to satisfy INMARSAT's other operational requirements.

4. Relocation of the MARISAT F-1 AOR satellite to 106° W.L. is a part of the arrangement whereby INMARSAT agreed to extend its lease of MARISAT capacity, according to COMGEN's application.[6] The 106° W.L. orbital location requested by COMGEN is adjacent to several Canadian satellites. Canada has registered with the International Frequency Registration Board (IFRB) an L-band mobile satellite (MSAT) at 106.5° W.L. on behalf of Telesat Mobile, Inc. (TMI). MSAT is expected to be launched during the 1993-95 time period. Telesat Canada (Telesat) currently operates a C-band satellite, ANIK D-1, at 104.5° W.L. Telesat also is coordinating another C-band satellite, ANIK E-A, which it expects to launch in 1990, at 107.3° W.L. COMGEN, TMI and Telesat have entered into a coordination agreement for MARISAT F-1 (AOR) L-band and C-band operations at 106° W.L. As part of that agreement, COMGEN will cease L-band and C-band operations at 106° W.L. when the coordination agreement terminates on January 1, 1995, unless extended, or when notified by TMI that its MSAT or other L-band space segment is ready for operation.[7]

5. In addition to the Canadian satellites, COMGEN identifies two other satellites adjacent to the 106° W.L. orbital location with which it will have to coordinate its C-band operations: (a) Spacenet 1R at 103° W.L., a hybrid (C-band and Ku-band) U.S. domestic satellite to be operated by GTE Spacenet Corporation (GTE Spacenet), and (b) Simon Bolivar 1 at 106° W.L., a C-band satellite to be operated by Bolivia, Ecuador, Peru and Venezuela for service to those countries. Neither of these satellites is

expected to be launched before 1992. COMGEN asserts that, based on its analysis of potential adjacent satellite interference between the MARISAT AOR at 106° W.L. and these two satellites, performance objectives for all three satellites can be met with minor coordination of their operations.

6. Comments on COMGEN's application were filed by American Mobile Satellite Corporation (AMSC), Geostar Messaging Corporation (Geostar), and GTE Spacenet. AMSC also filed a response to Geostar's comments. AMSC and Geostar generally support COMGEN's Section 214 and relocation requests. GTE Spacenet does not oppose COMGEN's applications, but it does raise some concerns about coordinating operations of its Spacenet 1R satellite at 103° W.L. and the MARISAT F-1 AOR satellite at 106° W.L.[8]

DISCUSSION

7. Commercial space segment capacity on the MARISAT satellite system has been leased to INMARSAT for the majority of the system's thirteen years of operation. Under that arrangement, INMARSAT has used the leased capacity to provide commercial maritime services worldwide. Authorizing COMGEN to extend this lease arrangement will facilitate INMARSAT's ability to continue providing these maritime services for the benefit of the U.S. public and others worldwide. INMARSAT's intention to use some of the leased capacity on the MARISAT F-1 AOR satellite under its domestic lease policy also will benefit the U.S. public. INMARSAT provides primarily international maritime, with some aeronautical, satellite services worldwide.[9] By leasing capacity on the MARISAT F-1 AOR satellite for the provision of U.S. domestic mobile satellite services, the U.S. will be able to develop its domestic market for mobile satellite services prior to the availability of dedicated domestic space segment.[10] In this regard, the Commission recently granted a general waiver of certain maritime mobile-satellite frequencies in the domestic Table of Allocations, 47 C.F.R. § 2.106, that will allow the L-band frequencies on MARISAT F-1 AOR to be used for domestic MSS.[11] For these reasons, pursuant to Section 214 of the Communications Act of 1934, the Bureau finds that the present and future public convenience and necessity will be served by authorizing COMGEN to extend the lease with INMARSAT for commercial space segment on the MARISAT satellite system. This Title II authority is granted until December 31, 1992, which is the lease term specified by COMGEN in its application.[12]

8. Although it supports COMGEN's Section 214 application, Geostar raises concerns about how capacity on the MARISAT F-1 AOR satellite will be made available to potential U.S. providers of domestic MSS. Geostar asserts that all applicants for domestic MSS systems should be given equal access to the portion of the space segment leased to COMSAT-WSD. Geostar has applied to construct and operate a mobile-satellite system using, in part, the same L-band spectrum employed by the MARISAT F-1 AOR satellite.[13] Geostar recognizes, however, that these concerns need not be addressed in acting on these applications but, rather, would be properly raised when considering COMSAT-WSD's application to bring the leased capacity on the MARISAT F-1 AOR satellite into service for the provision of domestic MSS.[14] Thus, these issues will not be addressed in this proceeding.

9. COMGEN's request to relocate the MARISAT F-1 AOR satellite from 15° W.L. to 106° W.L. would result in improved satellite antenna beam coverage of North America, thereby facilitating INMARSAT's intention to lease capacity on the facility to COMSAT-WSD and Teleglobe for domestic MSS use in the U.S. and Canada, respectively. No existing or proposed satellite for the U.S. or any other administration in Region 2[15] will be displaced by temporarily locating this satellite at 106° W.L. Indeed, COMGEN has agreed with the Canadian satellite operators Telesat and TMI that the MARISAT F-1 AOR satellite will cease operating at 106° W.L. when TMI's MSAT is ready for operation at 106.5° W.L. Given these circumstances, it is in the public interest to grant COMGEN's application to relocate temporarily the MARISAT F- 1 AOR satellite at 106° W.L.

10. International coordination for MARISAT F-1 AOR operation at 106° W.L. will have to be pursued in accordance with § 25.202(c) of the Commission's rules, 47 C.F.R. § 25.202(c), for all non-U.S. affected satellite networks pursuant to the international Radio Regulations, notwithstanding COMGEN's coordination agreement with TMI and Telesat. In addition, COMGEN is required to coordinate its operations with adjacent U.S. satellite operators such as GTE Spacenet, as needed.[16]

11. There are two additional matters regarding MARISAT F-1 AOR operations that need to be addressed at this time. COMSAT has informed the Commission that this satellite currently operates with an orbital inclination excursion exceeding eight degrees.[17] In an analogous case, the Bureau previously recognized the public benefit of lengthening the useful lifetime of older satellites with inclined orbit operation after those satellites had been efficiently operated during the majority of their nominal lifetimes.[18] Nonetheless, the Bureau limited the satellites' inclination excursion to five degrees in order not to jeopardize U.S. rights to use the geostationary orbital locations involved.[19] In this case, however, there is no long-term U.S. interest in the 106° W.L. orbital location. Thus, COMGEN may operate the MARISAT F-1 AOR satellite with an inclination excursion exceeding five degrees provided it coordinates its operations with adjacent satellite operators and with authorized terrestrial operators at C-band.[20] If harmful interference is caused into adjacent satellites or terrestrial operations directly as a result of using an increased inclination excursion, COMGEN will be required to cease operations immediately until the difficulty is resolved.

12. Finally, COMGEN's Title III authority to operate any portion of the MARISAT system satellites expires at the end of 1990, as discussed at paragraph two. At that time, COMGEN should request special temporary authority (STA) to continue operating those satellites that are still providing end-user services. The Bureau previously authorized a satellite's operations pursuant to STA when, as is the case with the MARISAT satellites, the satellite's initial license term had expired, its continued operations exceeded its original projected useful life, and the satellite was authorized to operate with an increased inclination excursion.[21]

ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 0.291 of the Commission's rules on delegation of authority, 47 C.F.R § 0.291, that COMSAT General Corporation's applications, pursuant to Section 214 of the Communications Act of 1934, as amended, (File Nos. 1301- 1302-, 1303-DSS-MISC-89) ARE GRANTED, and the applicant may lease to INMARSAT commercial space segment capacity on the MARISAT satellites in the Atlantic, Pacific and Indian Ocean Regions. This authority expires on December 31, 1992, unless extended by the Commission.

14. IT IS FURTHER ORDERED that COMSAT General Corporation's application to relocate the MARISAT F-1 AOR satellite (KS-33) from 15° W.L. to 106° W.L. (File No. 1299-DSS-ML-89) IS GRANTED. The assignment of any geostationary satellite orbital location does not confer any permanent right to the use of the orbit or spectrum.

15. IT IS FURTHER ORDERED that COMSAT General Corporation may operate the MARISAT F-1 AOR satellite at 106° W.L. with an inclination excursion exceeding five degrees subject to these conditions:

(a) COMSAT General Corporation shall control all interference to adjacent satellites and to authorized terrestrial radio stations to levels not exceeding that which would be caused by the satellite network operating in a normal stationkeeping mode;

(b) COMSAT General Corporation can not claim interference protection in excess of that which would be received by the satellite network operating in a normal stationkeeping mode;

(c) COMSAT General Corporation shall continue to operate MARISAT F-1 AOR with the appropriate east-west stationkeeping tolerance; and

(d) interference in excess of that described in (b) above shall not be caused to any other lawfully operated radio station, and any such interfering operations shall cease immediately upon notification.

16. IT IS FURTHER ORDERED that, pursuant to 47 C.F.R. § 25.202(c), COMSAT General Corporation shall provide the Commission with all required information on the MARISAT F-1 AOR satellite at 106° W.L. for international coordination processes.

17. COMSAT General Corporation is afforded thirty days from the date of release of this order to decline the authorizations as conditioned. Failure to respond within that period will constitute formal acceptance of the authorizations as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] COMGEN is a wholly-owned subsidiary of Communications Satellite Corporation (COMSAT).

[2] Construction permits and launch authorizations for these satellites were initially granted in 1976. *See* COMSAT General Corporation, 58 FCC 2d 386 (1976), 62 FCC 2d 856 (1976).

[3] The lease arrangement provides for fixed charges for the IOR and POR satellites and sharing of revenue received from third-parties leasing capacity on the AOR satellite.

[4] Leased service to the U.K. Royal Navy probably will not be renewed, according to COMGEN's application.

[5] *See* Letter of Chief, Domestic Facilities Division, Common Carrier Bureau, to R. Mansbach, COMSAT General Corporation (June 25, 1987).

[6] The Bureau recently granted COMGEN special temporary authority (STA) to begin moving the MARISAT F-1 AOR satellite to the 106° W.L. orbital location, thereby allowing COMGEN to meet its contract obligations with INMARSAT. *See* Letter of Chief, Domestic Facilities Division, Common Carrier Bureau to R. Mansbach, COMSAT General Corporation (January 24, 1990). The Bureau also recently granted COMGEN an STA, pursuant to Section 214, to extend the lease for capacity on the MARISAT F-1 AOR satellite to INMARSAT at its own risk. *See* Letter of Chief, Domestic Facilities Division, Common Carrier Bureau to R. Mansbach, COMSAT General Corporation (February 28, 1990).

[7] COMGEN has filed in this proceeding a copy of the coordination agreement among itself, TMI and Teleglobe.

[8] The Department of Defense (DOD) initially opposed, but subsequently withdrew its opposition to, COMGEN's application to relocate the MARISAT F-1 AOR satellite from 15° W.L. to 106° W.L.

[9] *See, e.g.*, Provision of Aeronautical Services via the INMARSAT System (CC Docket No. 87-75), 4 FCC Rcd 6072 (1989).

[10] The Commission has authorized AMSC to implement a domestic MSS and aeronautical mobile°atellite(R) system to operate on L-band frequencies (*i.e.*, 1545-1559 MHz and 1646.5-1660.5 MHz). *See* Mobile Satellite Service Authorization Order, 4 FCC Rcd 6041 (1989). Canada also is planning a similar mobile satellite system.

[11] *See* Communications Satellite Corporation, FCC 90-238 (July 3, 1990).

[12] If COMGEN and INMARSAT agree to extend their lease agreement beyond December 31, 1992, COMGEN may apply to extend its Title II authority for that purpose. *See also* para. 12 regarding Title III authorizations.

[13] Both Geostar and AMSC have filed applications to construct and operate mobile-satellite systems in the bands 1530-1544 MHz and 1626.5-1645.5 MHz. The MARISAT F-1 AOR satellite operates on the 1537-1541 MHz and 1638.5-1642.5 MHz segments. Both Geostar's and AMSC's applications are being held in abeyance pending Commission action on a petition for Rule Making filed by Geostar, *see* Public Notice, Report No. 1741 (July 27, 1988), proposing to reallocate these frequency bands for MSS use, in addition to the maritime mobile-satellite service (MMSS) already allowed by the U.S. Table of Allocations, 47 C.F.R. § 2.106.

[14] *See* COMSAT Satellite Corporation, File No. ITC-90-038; Public Notice, Report No. I-6416 (January 10, 1990).

[15] Region 2 comprises primarily North, Central and South America.

[16] GTE Spacenet expects to begin operating its Spacenet 1R satellite at 103° W.L. during the 1993-94 time period, which is later than the current Title II and Title III authorizations covering MARISAT F-1. If the COMGEN-INMARSAT lease is extended beyond 1992, coordination may be required with GTE Spacenet.

[17] *See* Communications Satellite Corporation, Application for authority to provide limited aeronautical services within the U.S. via the INMARSAT system, File No. I-T-C-90-085 (filed November 13, 1989). The inclination excursion is the extent to which the satellite orbital plane is tilted with respect to the equatorial plane of the Earth. With increased inclination excursions, a periodic correction in spacecraft attitude is needed to achieve a stationary antenna pattern on the Earth's surface.

[18] *See* Comsat General Corporation, 4 FCC Rcd 3820 (1989).

[19] Geostationary satellites that have been coordinated and notified under the international Radio Regulations receive international recognition and protection. The International Frequency Registration Board (IFRB), in its Rules of Procedure, has interpreted these regulations to define a geostationary satellite as one operating in a geosynchronous orbit with an inclination excursion of five degrees or less. The international Radio Regulations also stipulate that any fixed-satellite that is not operating in geostationary satellite orbit may not cause interference into adjacent geostationary satellites and may not claim protection from any interference from adjacent geostationary satellites. Thus, the satellite system is at risk of losing the right to use its orbit location to another satellite operating in the orbit.

[20] The C-band frequencies on which MARISAT F-1 AOR operates are shared with terrestrial fixed stations under the domestic Table of Allocations, 47 C.F.R. § 2.106. If frequency coordination agreements with authorized terrestrial facilities are needed, COMGEN is responsible for obtaining them.

[21] *See, e.g.,* COMSAT General Corporation, 4 FCC Rcd 3820 (1989); 3 FCC Rcd 4216 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
the Applications of

HUGHES NETWORK SYSTEMS, INC. File No. 797-DSE-P/L-90

and

CHEVRON INDUSTRIES, INC. File No. 1814-DSE-P/L-90

For Authority to Operate Networks of Technically Identical Earth Stations in the 12/14 GHz Frequency Bands

ORDER

Adopted: September 25, 1990; Released: October 16, 1990

By the Chief, Domestic Facilities Division:

1. Hughes Network Systems, Inc. (Hughes) and Chevron Industries, Inc. (Chevron) request authority to construct and operate networks of technically identical, very small aperture terminals (VSATs) in the 12/14 GHz frequency bands. Hughes and Chevron propose to use VSATs with 1.0 meter antennas in networks of 1,000 units and 5,000 units, respectively. The applicants state that each of its small earth stations will comply with the technical requirements set forth in the *VSAT Order*.[1] Although the applications considered when issuing the *VSAT Order* involved systems using VSATs with antennas not smaller than 1.2 meters, the Common Carrier Bureau did not preclude the blanket licensing of smaller VSAT antennas that met the *VSAT Order*'s specified technical requirements. Therefore, this order clarifies that aspect of the *VSAT Order* and grants the Hughes and Chevron applications.

2. In the *VSAT Order*, the Bureau considered proposed VSAT systems with a wide range of parameters, including VSAT antennas as small as 1.2 meters in diameter. In order to allow for routine licensing of VSATs,[2] maintain the integrity of the 2° spacing policy set forth in *Reduced Orbital Spacing*, [3] limit the demands placed on limited staff resources and facilitate simplified review of VSAT system applications, the Bureau defined baseline technical parameters in its standardized interference analysis. Among other items, the interference analysis focused on a baseline VSAT network with inbound (from remote terminal to central terminal) uplink power density of -14.0 dBW/4 KHz into a 1.2 meter earth station. However, the Bureau contemplated that improved technology would result in VSAT networks with parameters other than those specifically enunciated in the *VSAT Order* that did, in fact, comply with the *VSAT Order*. The Bureau made provisions for the grant of these systems when it stated that "[f]uture applications for these types of systems or *others* employing large numbers of technically identical, small antenna facilities in the 12/14 GHz bands will be processed routinely in accord with these procedures."[4] The applicants state and further demonstrate that their 1.0 meter VSATs are compliant with the requirements of the *VSAT Order*. Thus, the applications may be routinely processed pursuant to the *VSAT Order*.

3. Accordingly, pursuant to Section 0.291 of the Commission's rules on delegations of authority, IT IS ORDERED that Application File Numbers 797 and 1814-DSE-P/L-90 ARE GRANTED and Hughes Network Systems, Inc. and Chevron Industries, Inc. ARE AUTHORIZED to construct and operate their referenced networks described in the those applications subject to the terms and conditions and in accordance with the technical parameters set forth in their respective radio station authorizations. These authorizations are effective on the adoption date of this order.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] Declaratory Order in the Matter of Routine Licensing of Large Networks of Small Antenna Earth Stations Operating in the 12/14 GHz Frequency Bands, 51 Fed. Reg. 15067 (Common Carrier Bureau; April 22, 1986) (VSAT Order).

[2] *See*, American Broadcasting Companies, Inc., 62 FCC 2d 901 (1977). In American Broadcasting Companies, Inc., the Commission determined that small diameter antennas could be routinely licensed if a showing were made that their use was consistent with desirable orbital spacings between domestic satellites.

[3] Subsequent to American Broadcasting Companies, Inc. the Commission released Licensing of Space Stations in the Domestic Fixed Satellite Service, 54 Rad. Reg. 2d 577 (1983), recon. in part, Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, 99 FCC 2d 737 (1985) (*Reduced Orbital Spacing)* in which it adopted a reduction in orbital spacing to 2° in both the 4/6 GHz and 12/14 bands for the domestic fixed-satellite service.

[4] VSAT Order, supra note 1, at para. 25. (emphasis added).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Western Union Corporation — Transmittal No. 8740

Revisions to Tariff F.C.C. Nos. 286, 287, 288, and 289

ORDER

Adopted: September 21, 1990 Released: September 21, 1990

By the Chief, Common Carrier Bureau:

1. On August 9, 1990, Western Union Corporation (Western Union) filed Transmittal No. 8740 to increase by 25 percent its rates for termination of telex and TWX traffic from other interconnected record carriers. Western Union also proposes in this transmittal to increase its TWX access rates to $0.76 per minute. TRT/FTC Communications, Inc. (TRT/FTC) filed a petition to suspend the tariff and Western Union filed a reply. The proposed tariff revisions are scheduled to take effect September 24, 1990.

2. TRT/FTC protests the portion of Western Union's tariff that would increase the charges for delivery of inbound international telex calls via other record carriers and destined for Western Union's networks.[1] According to TRT/FTC, Western Union possesses monopoly, bottleneck control over Western Union's subscriber terminals. TRT/FTC asserts that interconnected record carriers therefore must deliver Western Union-addressed telex calls and pay whatever rates Western Union chooses to establish. It urges the Commission to recognize that, although Western Union's tariff filing technically qualifies for streamlined regulation, it must scrutinize Western Union's proposed rate increases to assure that they are just, reasonable, non-discriminatory, and otherwise lawful under the Communications Act and particularly under the Record Carrier Competition Act of 1981 (RCCA). TRT/FTC Petition at 1-5.

3. TRT/FTC also asserts that Western Union's proposed rate increases to other record carriers for inbound international telex and TWX termination exceeds the division payments which the international record carriers receive from their foreign correspondents. *Id.* at 3. TRT/FTC further argues that the tariff increase would cause "irreparable injury" to competition within the telex and TWX markets. *Id.* at 6. It states that the Commission, in accordance with the RCCA, established an interconnected network structure for United States telex services and set conditions which encouraged smaller carriers and more recent entrants to compete with larger, historically entrenched carriers. The tariff increases, petitioner asserts, would render it "impossible" for these newer, smaller carriers to provide their subscribers access to Western Union at less than "prohibitive rates," thus undermining the utility of the standards established under the RCCA. *Id.* at 6. TRT/FTC maintains that it would be "inconsistent" for the Commission to insist that United States telex carriers be subject to "cost-based" international accounting rates while permitting Western Union's "monopoly pricing" of network access. *Id.* at 7.

4. Western Union responds that since it is a non-dominant carrier, TRT/FTC must make the showing required by Section 1.773(a)(ii) of the Commission's Rules, 47 C.F.R. §1.773(a)(ii), in order to evoke suspension or rejection of the instant filing. It avers that TRT/FTC has failed to do so. Western Union Reply at 3. Additionally, Western Union argues that having monopoly power is not the same as having a competitive advantage, and that any competitive advantage it may enjoy is not illegal. *Id.* at 3.

5. The Common Carrier Bureau has reviewed Western Union's Transmittal No. 8740, TRT/FTC's pleading and Western Union's reply. We conclude that no compelling argument has been presented that the proposed tariff revisions are patently unlawful so as to require rejection, and that no question has been presented that warrants investigation at this time.

6. Accordingly, IT IS ORDERED that the petition to reject or to suspend and investigate Western Union Corporation's Tariff F.C.C. Nos. 286, 287, 288, and 289, Transmittal No. 8740, filed by TRT/FTC Communications, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] TRT/FTC incorporates by reference its July 25, 1990, petition against Western Union International, Inc., Transmittal No. 1925. That petition was denied in Western Union International, Inc., Transmittal No. 1925, Order, DA 90-1182, released Aug. 31, 1990 (Com.Car.Bur.).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-136

In the Matter of

Local Exchange Carriers' Individual
Case Basis DS3 Service Offerings

ORDER

Adopted: September 28, 1990 Released: September 28, 1990

By the Chief, Common Carrier Bureau:

1. On August 6, 1990, the Commission released an Order[1] directing, *inter alia*, certain carriers providing "dry," or "dark," fiber services to file tariff revisions that establish generally available, averaged rates for this service not later than 30 days from the release date of the *Reconsideration Order*.[2] That date was subsequently waived by a Bureau Order [3] which directed the carriers, including the Bell Atlantic Operating Companies, the BellSouth Operating Companies, Southwestern Bell Telephone Company, and US West, to file general dark fiber rates by October 1, 1990. The Bureau deferred the filing date to accommodate its consideration of petitions for waiver of the filing requirement submitted by the carriers and oppositions to those petitions.[4]

2. The pleadings filed in response to the waiver petitions were filed pursuant to Sections 1.4 and 1.45 of the Commission's Rules, 47 C.F.R. §§ 1.4, 1.45. The last reply, filed by Southwestern Bell, was filed with the Bureau on September 21, 1990.

3. The short time period between the end of the pleading cycle and the October 1, 1990, filing date is not adequate for the Bureau to consider and dispose of the issues presented by the pleadings. In addition, the carriers required to file general dark fiber rates have indicated that they need additional time to formulate averaged dark fiber rates. Accordingly, to give the Bureau additional time to consider the waivers and related pleadings, and to give the carriers additional time to formulate general dark fiber rates so that they may be promptly filed in the event the waivers are denied, we are deferring until November 1, 1990, the date Bell Atlantic, BellSouth, Southwestern Bell, and US West must file general tariff rates for dark fiber service.

4. This action should not prejudice any parties since existing dark fiber individual case basis (ICB) tariffs will remain intact until they expire, or until one year from the release date of the *Reconsideration Order*, whichever occurs first. We remind carriers that, as we stated in the initial *Extension Order*, the deferral of the general dark fiber filing date in no way affects the carriers' responsibility to abide by all other requirements and deadlines set out in the *Reconsideration Order*.[5]

5. Therefore, IT IS ORDERED that the *Extension Order* provision requiring Bell Atlantic, BellSouth, Southwestern Bell, and US West to file general rates for dark fiber service not later October 1, 1990, IS WAIVED, and Bell Atlantic, BellSouth, Southwestern Bell, and US West SHALL FILE general rates for dark fiber service, to be effective on 45 days' notice, not later than November 1, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, FCC 90-270, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 4842 (1990) (*Reconsideration Order*).

[2] *Reconsideration Order*, 5 FCC Rcd at 4845.

[3] Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Order, DA 90-1153 (Com.Car.Bur., released Aug. 29, 1990) (*Extension Order*).

[4] The parties who filed oppositions to the waiver petitions include: American Telephone and Telegraph Company (AT&T), against US West; MCI Telecommunications Corporation (MCI), against all petitions; and Williams Telecommunications Group, Inc. (WTG) and US Sprint Communications Company Limited Partnership (US Sprint), against Southwestern Bell.

[5] On September 5, 1990, Bell Atlantic, Southwestern Bell, and US West filed revisions amending the terms of their dark fiber ICBs to terminate one year from the release date of the *Reconsideration Order*. We note that BellSouth has not yet filed such revisions.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US Sprint Communications Company,
Limited Partnership,
Complainant
v. File No. E-90-113

AT&T Communications,
Defendant

ORDER

Adopted: September 26, 1990; Released: October 16, 1990

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On September 17, 1990, US Sprint Communications Company, Limited Partnership (hereinafter "US Sprint"), filed a Motion for Protective Order in the above captioned proceeding, requesting that it be issued consistent with the terms negotiated by the parties.

2. After due consideration, we are persuaded that the public interest would be served by approving the negotiated Protective Order (copy attached) which reflects the agreement negotiated between the parties.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. 0.291, that the request for approval of the attached Protective Order IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-441

In the Matter of

Amendment of Section 73.202(b),	RM-7210
Table of Allotments,	
FM Broadcast Stations.	
(Grand Rapids, Michigan)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 25, 1990; Released: October 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by Haith Broadcasting Corporation (petitioner), requesting the substitution of FM Channel 254A for Channel 255A at Grand Rapids, Michigan, and modification of its construction permit for Station WXJI, Channel 255A, Grand Rapids, to specify operation on Channel 254A.

2. In support of the proposal, petitioner indicates its desire to take advantage of the Commission's new rules changing the ERP of a Class A station from three to six kilowatts.[1] Petitioner states that it is precluded from increasing power on Channel 255A but could do so on Channel 254A.[2]

3. We believe petitioner's proposal warrants consideration and would serve the public interest. Channel 254A can be allotted to Grand Rapids, Michigan, in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site. [3] Canadian concurrence is required since Grand Rapids is located within 320 kilometers (200 miles) of the U.S. - Canadian border. We shall propose to modify the construction permit (BPH-860507PT) for Station WXJI to specify operation on Channel 254A without inviting other expressions of interest. *See* 47 CFR Section 1.420(g).

4. Accordingly, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Grand Rapids, Michigan	229B, 239B, 245B, 250B, 255A, 267B 275B, 281B, 289B	229B, 239B, 245B, 250B, 254A, 267B, 275B, 281B, 289B

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 7, 1990,** and reply comments on or before **December 24, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Robert W. Healy
Reddy, Begley & Martin
2033 M Street, N.W.
Suite 500
Washington, D.C. 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] *See* MM Docket No. 88-375, 4 FCC Rcd 6375 (1989).

[2] According to petitioner, Channel 255A at six kilowatts would be short-spaced to Station WFMK, Channel 256B, East Lansing, Michigan.

[3] The coordinates for Channel 254A at Grand Rapids are 43-01-36 and 85-41-28.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-390

In the Matter of

Amendment of Section 73.202(b), RM-6762
Table of Allotments,
FM Broadcast Stations.
(St. George, Utah)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 27, 1990; Released: October 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Color Country Broadcasting Corporation (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 6855 (1989), proposing the allotment of Channel 240C to St. George, Utah, as that community's third local FM service. Petitioner filed comments reaffirming its intention to apply for the channel, if allotted.

2. We believe the public interest would be served by allotting Channel 240C to St. George, Utah, as that community's third local FM service. The channel allotment can be made in compliance with the Commission's minimum distance separation requirements with a site restriction of 29.6 kilometers (18.4 miles) south of the city.[1] As stated in the *Notice*, the petitioner contends that the specified site restriction is necessary to avoid "environmentally sensitive areas" around St. George.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
St. George, Utah	228A, 240C, 259C

4. The window period for filing applications will open on **December 3, 1990,** and close on **January 2, 1991.**

5. IT IS FURTHER ORDERED, That this proceeding, IS TERMINATED.

6. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The restricted site coordinates are 36-50-50 and 113-29-28. Because the petition which resulted in this allotment was filed prior to October 2, 1989, applicants may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-536

In the Matter of

Amendment of Section 73.202(b), RM-7064
Table of Allotments,
FM Broadcast Stations.
(Ashley, Michigan)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 27, 1990; Released: October 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 6469 (1989), issued in response to a petition filed by William V. Constine (petitioner). The *Notice* proposed the allotment of FM Channel 223A to Ashley, Michigan, as that community's first FM broadcast service. Petitioner filed coments in support of the *Notice* and stated his intention to apply for the channel. No other comments were received.

2. We believe the public interest would be served by the allotment of Channel 223A at Ashley, Michigan, since it could provide the community with its first FM broadcast service. Channel 223A can be allotted to Ashley in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules without a site restriction.[1] Since Ashley is located within 320 kilometers (200 miles) of the U.S. - Canadian border, concurrence of the Canadian government has been obtained.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Ashley, Michigan	223A

4. The window period for filing applications for Channel 223A at Ashley will open on **December 3, 1990,** and close on **January 2, 1991.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 223A are 43-11-12 and 84-28-30. Because the petition which resulted in this allotment was filed before October 2, 1989, the applicants may avail themselves of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-479

In the Matter of

Amendment of Section 73.202(b),	RM-7030
Table of Allotments,	
FM Broadcast Stations.	
(Newberry, Michigan)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 27, 1990; Released: October 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 7905 (1989), issued in response to a petition filed by Leon B. Van Dam (petitioner), proposing the substitution of FM Channel 250C1 for Channel 250C2 at Newberry, Michigan. Petitioner also requested modification of his license for Station WUPQ to specify operation on Channel 250C1 in lieu of Channel 250C2.[1] Petitioner filed supporting comments in which he reaffirmed his interest in the channel. Jack St. Andre (St. Andre) filed comments. Petitioner filed a late reply to St. Andre's comments.[2]

2. St. Andre contends that allotment of Channel 250C1 to Newberry will cause financial hardship to its construction permit for Station WNBY, Channel 229C2, Newberry, Michigan. St. Andre requests that the allotment of Channel 250C1 to Newberry be denied or that petitioner provide proof that Station WNBY will have the same opportunity to upgrade its facility to Class C1.

3. We believe the public interest would be served by the substitution of Channel 250C1 for Channel 250C2 at Newberry, Michigan because this would enable Station WUPQ to expand its coverage area. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at the site specified by petitioner. [3] The arguments made by St. Andre are not sufficiently persuasive to justify denying the allotment to Newberry. On the contrary, allegations of adverse economic impact are not relevant. *See Report and Order* in MM Docket 87-68, 3 FCC Rcd 638 (1988), *recon. denied* 4 FCC Rcd 2276 (1989). In accordance with Section 1.420(g) of the Commission's Rules, we shall modify the license of Station WUPQ to specify operation on FM Channel 250C1 in lieu of Channel 250C2. Since Newberry is located within 320 kilometers (200 miles) of the U.S.- Canadian border, concurrence of the Canadian government has been obtained.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Newberry, Michigan	229C2, 250C1

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WUPQ, Newberry, Michigan, IS MODIFIED to specify operation on Channel 250C1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The *Notice* proposed the modification of petitioner's construction permit (BPH-880613MG). The license for Station WUPQ, Channel 250C2, was granted after the Notice was issued.

[2] Petitioner's reply comments were received after the cut-off date established in this proceeding and were not accompanied by a motion to accept. Therefore, they are unacceptable for consideration.

[3] The coordinates for Channel 250C1 are 46-18-53 and 85-33-45. Since this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the licensee may avail himself of the provisions of Section 73.213(c) of the Commission's rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-501

In the Matter of

Amendment of Section 73.202(b), RM-7041
Table of Allotments,
FM Broadcast Stations.
(Mora, Minnesota)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 8141 (1989), issued in response to a petition filed by John James Godfrey (petitioner), proposing the substitution of FM Channel 238C3 for Channel 237A at Mora, Minnesota. Petitioner also requested modification of its construction permit (BPH-880107NB) for Channel 237A, to specify operation on Channel 238C3. Petitioner filed supporting comments in which he reaffirmed his interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 238C3 for Channel 237A at Mora, Minnesota, since it could provide the community with its first wide coverage area FM station. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at the site specified by petitioner.[1] Since Mora is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. In addition, we have authorized a modification of the petitioner's construction permit for Channel 237A, Mora, Minnesota, to specify operation on Channel 238C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Mora, Minnesota	238C3

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Channel 237A, Mora, Minnesota, IS MODIFIED to specify operation on Channel 238C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 238C3 are 45-49-18 and 93-22-18. Because the petition which resulted in this allotment was filed prior to October 2, 1989, the permittee may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-577

In the Matter of

Amendment of Section 73.202(b), RM-7093
Table of Allotments,
FM Broadcast Stations.
(Hutchinson, Kansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 17, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 8729 (1989), issued in response to a petition filed by KWHK Broadcasting Company, Inc. (petitioner), proposing the substitution of FM Channel 246C3 for 246A at Hutchinson, Kansas. Petitioner also requested modification of its construction permit (BPH-881116MF) for Channel 246A, to specify operation on Channel 246C3. Petitioner filed supporting comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 246C3 for Channel 246A at Hutchinson, Kansas, since it could provide the community with an additional wide coverage area FM station. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at the site specified by petitioner.[1] In addition, we have authorized a modification of the petitioner's construction permit for Channel 246A, Hutchinson, Kansas, to specify operation on Channel 246C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Hutchinson, Kansas	246C3, 271C, 275C1

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Channel 246A, Hutchinson, Kansas, IS MODIFIED TO SPECIFY operation on Channel 246C3 subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 246C3 are 38-02-39 and 98-00-56.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: October 5, 1990

COMMENTS INVITED ON NEW YORK METROPOLITAN AREA REGIONAL PUBLIC SAFETY PLAN AMENDMENT

The Commission has received a proposed amendment to the public safety radio communications plan for the the New York Metropolitan Area (Region 8). Specifically, the Region 8 Tri-State Radio Planning Committee voted at its September 27, 1990, meeting to approve the following changes to their channel allotment plan:

Channel	Freq.	Change from	Change to
611	821/866.1500	Orange [3] County, NY	Belleville Township, NJ
634	821/866.4375	Unassigned	New York City PD, NY
672	821/866.9375	Unassigned	Danbury Police Dept., CT
697	822/867.2750	Unassigned	Old Bridge Township, NJ
710	822/867.4375	Unassigned	Belleville Township, NJ
721	822/867.6000	Unassigned	Essex County Police, NJ
722	822/867.6125	Leonia PD, NJ[4]	Scarsdale Fire Dept., NY
723	822/867.6250	Orange [3] County, NY	New York City PD, NY
748	822/867.9375	Unassigned	Old Bridge Township, NJ
780	823/868.3625	Mercer County, NJ [3] & Dutchess County, NY[3]	Fairfield Township, NJ
814	823/868.7875	Orange [3] County, NY	Belleville Township, NJ
816	823/868.8125	Orange County, NY[3]	Newark Housing Auth., NJ
819	823/868.8500	Unassigned	Essex County Police, NJ
820	823/868.8625	Unassigned	Town of Fairfield, CT
821	823/868.8750	Unassigned	Jersey City Police, NJ & Secaucus Police, NJ
608	821/866.1125	Mercer County, NJ[3] & Stamford, CT	Howell Township, NJ
620	821/866.2625	Essex/Passaic Red Cross, NJ	Eastern Union County Red Cross, NJ
666	821/866.8625	CT State Police, CT	Old Bridge Township, NJ
686	822/867.1375	CT State Police, CT	Old Bridge Township, NJ
718	822/867.5625	Port Authority, NY	Danbury Police Dept., CT
724	822/867.6375	Norwalk PD, CT	Maywood Police Dept., NJ
756	823/868.0625	Babylon, NY & Orange County, NY[3]	Danbury Police Dept., CT

[3] This assignment was previously a pool assignment. *See* Notes 1 and 2, page 34 of the currently approved plan for FCC Region 8. These changes were coordinated and approved by the affected adjacent FCC region.

[4] Leonia Police Department notified FCC Region 8 that it wished to withdraw its assignment. The FCC Region 8 approved the withdrawal without prejudice.

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of Federal Register publication of this public notice to file comments and fifteen days to reply to any comments filed. (*See* Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Region 8 consists of: Fairfield, Litchfield, New Haven, and Middlesex Counties, Connecticut; Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Dutchess, and Westchester Counties, New York; Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, Warren, Middlesex, Somerset, Hunterdon, Mercer, and Monmouth Counties, New Jersey. (General Docket No. 87-112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to *General Docket No. 88-476, New York Metropolitan Area - Region 8,* and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Concurrent with this notice and comment period, Region 8 has opened a third window application period beginning October 1, 1990, and ending November 1, 1990. Any applications submitted after November 1, 1990, will be rejected.

Questions regarding this public notice may be directed to Maureen Cesaitis, Private Radio Bureau, (202) 632-6497.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Continental Cablevision
of Illinois, Inc.,
Complainant,

v. File No. PA-86-0011

Northwestern Bell
Telephone Company,
Respondent.

ORDER

Adopted: October 10, 1990; Released: October 15, 1990

By the Chief, Accounting and Audits Division:

1. On May 12, 1986, Continental Cablevision of Illinois, Inc., filed the above-referenced complaint pursuant to Section 224 of the Communications Act, 47 U.S.C. § 224, seeking a determination that the Northwestern Bell Telephone Company had imposed unjust and unreasonable rates for cable television pole attachments. This matter was deferred pending issuance of amended rules for processing pole attachment rate complaints, *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles,* 2 FCC Rcd 4389 (1987).

2. On July 1, 1988, counsel for Continental Cablevision of Illinois, Inc., requested dismissal of the complaint, advising that there no longer are issues in controversy.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commissions Rules, 47 C.F.R. § 0.291, that the complaint filed by Continental Cablevision of Illinois, Inc., is DISMISSED and the proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran
Chief, Accounting and Audits Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

VIRGIN ISLANDS TELEPHONE CORPORATION — AAD 90-19

Request for Declaratory Ruling Concerning the Proper Treatment of Certain Interest Expense Under Parts 32 and 64 of the Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: October 5, 1990; Released: October 15, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. On May 7, 1990, the Virgin Islands Telephone Corporation (VITELCO) filed a Request for Declaratory Ruling concerning the regulatory treatment of interest expense associated with a loan used in the acquisition of VITELCO by its parent company. VITELCO requests this ruling to resolve a controversy between itself and the National Exchange Carrier Association (NECA), which prepares VITELCO's interstate access tariffs.[1] By this Order we determine that the interest expense on VITELCO's books must be included in the calculation of its federal income tax expenses in determining its interstate revenue requirements.

2. In June of 1987, the Atlantic Tele-Network Company (ATN) purchased 100% of the stock of VITELCO from the ITT Corporation. As part of the financing for this stock purchase, ATN arranged for a bridge loan from E.F. Hutton in the amount of $94 million. At the date of the acquisition, VITELCO had no long-term debt. On December 30, 1987, ATN entered into a borrowing arrangement with the Rural Telephone Finance Cooperative (RTFC)[2] in order to replace the bridge loan with permanent financing. ATN borrowed $104 million from the RTFC. Under the terms of the loan agreement, $60 million of the $104 million in loan proceeds were lent to, and recorded on the books of, VITELCO and the remaining amount was recorded on ATN's books. For the $60 million of debt incurred by VITELCO, it received $49.6 million in cash and $10.4 million in RTFC Subordinated Capital Certificates. On December 30, 1987, VITELCO paid a dividend to ATN in the amount of $49.6 million in order to permit ATN to repay the bridge loan. Pursuant to a settlement with the Virgin Islands Public Services Commission in connection with certain rate proceedings, on December 31, 1988, VITELCO transferred $4.4 million of the RTFC Subordinated Capital Certificates to ATN in exchange for a 10% promissory note from ATN due January 1, 1990. As a result of this transaction, VITELCO is left with $6 million of Subordinated Capital Certificates recorded on its books. VITELCO filed the Request for Declaratory Ruling because VITELCO and NECA were unsuccessful in their attempts to resolve the controversy as to the proper ratemaking treatment of VITELCO's interest expense on the RTFC loan.

II. POSITIONS OF THE PARTIES

3. The dispute between VITELCO and NECA involves the proper treatment of interest expense on the portion of the RTFC loan recorded on VITELCO's books beginning in 1988 and the treatment of income from the RTFC Subordinated Capital Certificates. VITELCO contends that the interest expense attributable to the loan recorded on its books should not be included in the determination of the interstate portion of Federal Income Tax expenses (FIT) for revenue requirement calculation purposes. NECA contends that the interest expense should be treated as an FIT deduction for purposes of interstate access revenue requirements and NECA settlements. [3] NECA also believes the Commission's Part 32 accounting rules do not allow the use of income from the RTFC Subordinated Capital Certificates to be offset against the interest expense.[4] Until this dispute is resolved, VITELCO has been making voluntary monthly adjustments to its 1988 settlements with NECA. In addition to a ruling that its proposed regulatory treatment of ATN loan interest expense is correct, VITELCO requests the Commission to direct NECA to refund these voluntary monthly adjustments.

4. VITELCO claims that ATN's acquisition of its stock is a nonregulated transaction and, in accordance with Parts 32 and 64 of the Commission's rules,[5] the interest expense on the related borrowing should not be included in ratemaking. VITELCO claims that ATN's loan to purchase VITELCO's stock (the bridge loan) was not used for plant construction or to pay expenses incurred in the provision of telephone service and, therefore, the related interest expense was not associated with regulated telephone operations. VITELCO contends that the interest expense recorded on its books that relate to the RTFC loan is solely attributable to ATN's purchase of VITELCO's common stock. Under these circumstances, this interest expense is directly assignable to ATN and should not be included in the calculation of FIT for interstate access revenue requirement purposes.[6] VITELCO maintains that the interest expense on ATN's bridge loan was properly excluded from VITELCO's cost of service determinations and that NECA did not disagree with this ratemaking treatment. VITELCO further argues that since both loans were obtained for the same purpose, it would be illogical to distinguish the ratemaking treatment in the manner NECA suggests.[7] Along with its filing, VITELCO includes letters from the independent accounting firms of Coopers & Lybrand and Deloitte & Touche, which support its position.[8]

5. NECA commented on VITELCO's request on May 17, 1990. NECA explains that under its pooling procedures, tariff participants receive settlements that include an allowance for FIT expenses. It states that in accordance with FCC accounting rules, it requires companies to report interest expense on debt as a deduction prior to calculating the FIT portion of settlements. NECA states that the dispute concerns whether or not the interest expense at issue here relates to regulated activity.[9]

6. NECA contends that the record clearly shows that the RTFC loan was used to acquire regulated telephone plant, and is secured by a mortgage on that plant. NECA also contends that it appears from VITELCO's financial statements that as of December 1988, the ability of ATN to service the RTFC borrowing was solely dependent on funds from VITELCO's regulated operations. NECA believes that while the RTFC loan was not used to finance "new construction", it was used to acquire existing telephone plant. NECA states that the interest expense is properly recorded on VITELCO's books and therefore must be included in VITELCO's cost study as a deduction for FIT calculation purposes. NECA points out that a Commission holding which fails to properly recognize this transaction as part of FIT calculations could allow any company that has exchanged equity for debt to claim "phantom" income tax reimbursements from interstate ratepayers without regard to whether taxes actually are owed by the company.[10]

7. NECA adds that if the RTFC interest expense is included in determining its FIT allowance, the income from the RTFC Subordinated Capital Certificates should not be treated as a reduction of the effective interest rate or a refund of the interest expense which RTFC has charged VITELCO on its loan. NECA contends that this accounting treatment is not supported by Part 32 of the Commission's rules. NECA believes that the interest expense is properly recorded in Account 7500, Interest and Related Items. NECA also believes that according to the description of entries to be included in Account 7500, interest expenses are not to be offset by investment related income. NECA suggests that such income should be booked in Account 7300, Nonoperating income and expense, which is used to record amounts received from investments in nonaffiliated companies. Nonaffiliated companies are treated as nonregulated investments.[11] NECA concludes that there is no basis in the rules for netting the income against the interest expense associated with the RTFC loan.[12] NECA includes with its comments a statement from the independent accounting firm of Ernst and Young which supports its position.[13]

III. DISCUSSION

8. We have considered the positions of VITELCO and NECA regarding the appropriate ratemaking treatment for the interest expense relating to the RTFC loan. We conclude that the interest expense on VITELCO's books should be treated as a deduction in the calculation of FIT for purposes of interstate access revenue requirements and NECA settlements as provided in Part 36.[14] In addition, the interest income relating to the RTFC Subordinated Capital Certificates should not be used as an offset to VITELCO's interest expense.

9. We cannot agree with VITELCO's claim that the debt recorded on its books is unrelated to its telephone operations. The effect of VITELCO's recording of this debt and reducing its equity by payment of a dividend to ATN leaves VITELCO financed almost entirely by debt. Even a cursory review of VITELCO's balance sheet indicates that virtually all of its assets, except for the RTFC Certificates, are regulated plant and that those assets have been financed almost entirely by debt. Moreover, the relationship between VITELCO's regulated plant and its debt is further supported by the fact that VITELCO's regulated plant has been pledged as security for the debt.

10. Finally, the income from the RTFC Subordinated Capital Certificates should not be offset against the interest expense related to the loan. The income from these certificates should be recorded in Account 7300, Nonoperating Income and Expense along with interest income from other securities and evidences of indebtedness, which are the property of the company.[15] The RTFC Subordinated Capital Certificates are a nonregulated investment which shall not be included in VITELCO's rate base. Accordingly, the related income should be treated as nonoperating income.[16] Although the interest expense cannot be reduced by the income on the RTFC Subordinated Capital Certificates, we note that not all of the interest expense would be used in the FIT calculations. Under Part 36, interest expense related to nonoperating net investment such as the RTFC Subordinated Capital Certificates would be excluded.[17]

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED pursuant to Sections 4 (i) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i) and 220, That the interest expense relating to the RTFC loan on VITELCO's books must be included in the determination of Federal Income Taxes for the purpose of determining interstate revenue requirements, and that the interest income from the RTFC Subordinated Capital Certificates should be recorded in Account 7300, Nonoperating Income and Expense and excluded from determinations of interestate revenue requirements

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] NECA prepares and files access tariffs on behalf of telephone companies that do not file separate tariffs or concur in a joint access tariff of another telephone company. NECA also pools access revenues and distributes these revenues to pool participants.

[2] RTFC is a cooperative that offers financing programs and services to rural telephone companies and cooperatives. It is affiliated with the National Rural Utilities Cooperative Finance Corporation.

[3] When interest expenses are included in the calculation of FIT, the taxable income to which the tax rates are applied becomes smaller, resulting in a lower tax expense component in revenue requirement calculations.

[4] 47 C.F.R. Part 32.

[5] *Id.* and 47 C.F.R. Section 64.901 *et. seq.*

[6] VITELCO Request at 5.

[7] *Id.* at 6.

[8] *Id.*, Attachment C and D.

[9] NECA Comments at 4-5.

[10] *Id.* at 5-6.

[11] *See* 47 C.F.R. Sections 32.7500 and 32.7300.

[12] *Id.* at 7-8.

[13] *Id.*, Appendix A.

[14] *See* 47 C.F.R. Section 36.412 (b)(4)(i).

[15] *See* 47 C.F.R. Sections 32.7300 and 32.7320.

[16] Investments of this type that are allowed in the rate base are limited to Class B Rural Telephone Bank Stock. *See* 47 C.F.R. Section 36.172 and 4 FCC Rcd 1697 (1989).

[17] *See* 47 C.F.R. Section 36.412(b)(4)(i).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

WAITSFIELD-FAYSTON TELEPHONE COMPANY, INC. AAD 9-1945

Petition for Waiver of Section 36.154(f) of the Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: October 5, 1990; Released: October 15, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. On May 26, 1989, Waitsfield-Fayston Telephone Company, Inc. (Waitsfield) filed a Petition for Waiver of Section 36.154(f)[1] of the Commission's Rules on its own behalf and on behalf of similarly situated carriers. Section 36.154[2] of the Commission's Rules prescribes the procedures carriers follow in apportioning loop costs between the state and interstate jurisdictions. The interstate allocation factor applicable to subscriber lines used jointly for state and interstate services is currently in a process of transition to a uniform 25 percent interstate allocator. Section 36.154(f) limits the annual decrease in a carrier's interstate apportionment of relevant non-traffic sensitive (NTS) loop costs [3] to five percentage points. Waitsfield's petition requests that the existing procedures for calculating the five percentage point decrease be waived if a carrier meets the criteria established in a proposed three-part test. For the reasons stated below, we deny Waitsfield's petition.

2. Subcategory 1.3, subscriber or common Lines, used to be allocated using an interstate allocation factor known as the subscriber plant factor (SPF). The Commission froze the interstate SPFs at the 1981 levels. In 1983, the Commission changed the interstate allocation factor for Subcategory 1.3 from SPF to a uniform 25 percent, and subsequently established an eight year transition period ending by 1993 for implementation of this change.[4] Section 36.154(f)(1)[5] limits the annual decrease in a study area's interstate allocation for Subcategory 1.3 and certain other costs to 5 percentage points per year, and Section 36.154(f)(2)[6] defines the procedures for calculating the 5 percentage point decrease.

II. SUMMARY OF PETITION

3. Waitsfield's petition requests that Section 36.154(f) of the rules be waived for it, and similarly situated carriers, if those rules would result in an actual decrease in the carrier's interstate apportionment of SPF affected plant of more than 5 percentage points when compared to the previous year's percentage interstate assignment, including high cost assistance.[7] Waitsfield proposes a three-part test to be used by carriers to qualify for this waiver: (1) the carrier's 1981 frozen interstate SPF must be over 65 percent; (2) the percent of the study year interstate assignment of subscriber loop costs, including USF amounts, must be less than the previous year's percent interstate assignment; and (3) the "excessive" transition of these interstate costs to the intrastate jurisdiction must be harmful to a company's intrastate operations.

4. Waitsfield states that the requested waiver is necessary "to eliminate an unfair condition that results when Waitsfield and a minority of other small exchange carriers calculate their transitional level of interstate SPF under the procedures set forth in Section 36.154(f)."[8] Waitsfield claims that although the rule indicates an annual interstate allocation change of 5 percentage points or less, the actual effect for Waitsfield is a change of greater than 5 percentage points. According to Waitsfield, the excessive reduction in its interstate allocation of plant affected by SPF is caused by differences in the way the decrease in costs is calculated for purposes of the limitation on the interstate reduction and the way the USF is calculated. In the calculations related to the limitation on the interstate reduction during the transition, only a portion of the costs affected by the SPF are used, while the total amount of high cost support, which is based on all costs affected by the SPF changes, is used. Waitsfield concludes that the continued "excessive" transition of costs to the intrastate jurisdiction applies "upward pressure on intrastate rates at a rate greater than Waitsfield and similarly situated carriers can economically absorb through growth or tariff rate adjustments."[9] Accordingly, Waitsfield asks that "it, and similarly situated carriers, be granted a waiver that would allow them to lower the transitional SPF by 5% per year without further adjustment."[10]

III. DISCUSSION

5. In WAIT Radio v. FCC, the United States Court of Appeals stated, "a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[11] In this case, Waitsfield has not demonstrated the special circumstances which would allow us to deviate from the Commission's Rules. They have also failed to show that a deviation from the general rule would serve the public interest. We, therefore, deny Waitsfield's petition.

6. Waitsfield did not support or justify the claim that Section 36.154(f) of the Commission's Rules has put exceptional upward pressure on its intrastate rates. It only claims that the 5 percentage point per year limitation on the transition to the 25 percent allocator is "unfair" and ultimately contributes to an increase in intrastate rates that is greater than that contemplated by the SPF transition. Waitsfield, however, informally advised the staff that its local residential rate is approximately $15.00 and its single line local business rate is approximately $23.00. These rates do not appear to be high in comparison to the nationwide average. In the February 9, 1990 "Telephone Rates Update," released by the Bureau's Industry Analysis Division, the nationwide average charge for unlimited, local residential service is calculated to be $17.16. The nationwide average charge for a mix of measured, message, and unlimited single-line local business service is calculated to be $37.02. This does not lead us to conclude

that Waitsfield's intrastate rates have been unduly affected by the SPF transition rules. Moreover, it has provided no information to support its assertion that the incremental effect on its intrastate rates, in the absence of a waiver, would cause serious harm to the company and its customers.

7. In sum, Waitsfield has not demonstrated that Section 36.154(f) of the Commission's Rules, in regard to a carrier's computation of the 5 percentage point limitation on the reduction in the interstate allocation because of the SPF transition, has caused substantial harm to itself, its subscribers, or any other carriers or their subscribers.[12]

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 C.F.R. §154(i), That Waitsfield-Fayston's petition for waiver of Section 36.154(f) of the Commission's Rules IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] 47 C.F.R. §36.154(f).

[2] 47 C.F.R. §36.154.

[3] These NTS costs include Subcategory 1.3, subscriber or common Lines and Category 4.13 central office equipment (COE).

[4] Although the Commission determined that the SPF transition should be completed by 1993 for most carriers, it allowed the transition period to extend beyond 1993 for companies subject to the 5 percentage point limit on the reduction in their interstate allocation. *See* MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, *Decision and Order*, 50 Fed. Reg. 939 (December 1984), *adopting Recommended Decision*, 49 Fed. Reg. 48325, 48338, at para. 73, (November 1984).

[5] 47 C.F.R. §36.154(f)(1).

[6] 47 C.F.R. §36.154(f)(2).

[7] The Commission implemented high cost support or the Universal Service Fund (USF) in order to help keep local exchange rates lower than they otherwise would be in high cost areas.

[8] Waitsfield Petition at 2.

[9] *Id.* at 3.

[10] *Id.* at 6.

[11] WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). *See also*, Northeast Cellular Telephone Company, L.P., v. FCC, 897 F.2d 1164 (D.C. Cir. 1990).

[12] United States Telephone Association (USTA) filed a petition on July 28, 1988, requesting a Rule Making to amend Section 36.154(f) of the Rules. This petition proposes to change the limitation contained in Section 36.154(f) to require that if the present calculation yields an allocation factor more than 5 percentage points below the previous year's factor, then the revised factor shall be the previous year's factor minus 5 percentage points. This petition will be addressed in a separate order.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-400

In the Matter of

AT&T Communications	Transmittal Nos. 285, 318, 342, 346, 504, and 559

Tariff F.C.C. Nos. 9, 10, and 11

ORDER

Adopted: October 5, 1990; Released: October 15, 1990

By the Chief, Common Carrier Bureau:

1. On May 28, 1985, the Commission released an Order initiating an investigation to examine the restructured American Telephone and Telegraph Company (AT&T) interstate private line tariffs that AT&T filed to reflect the effects of the Bell System divestiture and the implementation of access charges.[1] The *May 28 Order* also imposed an accounting order.

2. On July 25, 1988, the Commission released an Order terminating the investigation initiated in the *May 28 Order*.[2] The *July 25 Order*, however, failed to terminate the related accounting order. We have concluded that, in light of the Commission's action in terminating the investigation, there is no continuing need to impose any accounting order requirements on AT&T.

3. Therefore, IT IS ORDERED that the accounting order imposed in the investigation in CC Docket No. 85-400 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* AT&T Communications, Restructuring of Private Line Services, 103 FCC 2d 77 (1985) (*May 28 Order*).

[2] *See* AT&T Communications, Tariff F.C.C. Nos. 9, 10, and 11, Order Terminating Investigation, 3 FCC Rcd 4579 (1988) (*July 25 Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-442

In the Matter of

Amendment of Section 73.202(b), RM-7358
Table of Allotments,
FM Broadcast Stations.
(Oakland, Maryland)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 26, 1990; Released: October 17, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by Oakland Radio Station Corporation (petitioner), requesting the substitution of FM Channel 222A for 221A at Oakland, Maryland, and modification of its license for Station WXIE(FM) to specify operation on the new channel.

2. In support of the proposal, petitioner states that the substitution of channels will enable Station WXIE(FM) to upgrade to the new Class A power limitations. According to petitioner, the new channel will result in improved service to Garrett County, Maryland, as well as the neighboring West Virginia counties of Preston, Tucker, and Mineral. Petitioner states that it is not eligible to upgrade to the new Class A power on Channel 221A as Station WXIE(FM) would be short spaced to Station WGLU, Channel 221A, Johnstown, Pennsylvania.

3. We believe petitioner's proposal warrants consideration because it would enable Station WXIE(FM) to expand its coverage area. Channel 222A can be allotted to Oakland, Maryland, in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site.[1] We shall propose to modify the license of Station WXIE(FM) to specify operation on Channel 222A in lieu of Channel 221A without inviting expressions of interest. *See* 47 CFR Section 1.420(g).

4. Accordingly, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Oakland, Maryland	221A	222A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 10, 1990,** and reply comments on or before **December 26, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Earl R. Stanley
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006
(Counsel for the petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 222A are 39-26-41 and 79-31-42.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-137

In the Matter of

Amendment of Section 73.202(b),	RM-C005
Table of Allotments,	RM-6998
FM Broadcast Stations.	
(Waseca, Minnesota, and Menomonie and Spencer, Wisconsin)[1]	

ORDER TO SHOW CAUSE

Adopted: September 26, 1990; Released: October 17, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission issued a *Notice of Proposed Rule Making*, 4 FCC Rcd 4904 (1989), proposing the substitution of FM Channel 221C3 for Channel 221A at Waseca, Minnesota, and modification of the license for Station KOWO-FM, Waseca, to specify Channel 221C3. This action was taken on the Commission's own motion after release of the *First Report and Order in MM Docket 88 - 375*, 4 FCC Rcd 2792 (1989), which created an additional class of FM broadcast station, Class C3. In response to the *Notice*, Waseca Communications, Inc. ("Waseca"), licensee of Station KOWO-FM, Waseca, filed comments stating its intent to file an application for a Class C3 license. Phillips Broadcasting Company ("Phillips"), licensee of Station WMEQ(FM), Channel 221A, Menomonie, Wisconsin, filed a counterproposal.[2] Waseca and Phillips separately filed supplemental comments and reply comments.[3]

2. Phillips' counterproposal requests the substitution of Channel 221C3 for Channel 221A at Menomonie and modification of its license for Station WMEQ(FM) to specify operation on Channel 221C3, in order to provide Menomonie with a wide coverage area FM channel. To accommodate this substitution, Phillips notes that it would be necessary to change the channel used by Station WOSX (formerly Station WMJA), Spencer, Wisconsin, from Channel 221A to Channel 222A. Phillips claims that it would be possible to accommodate the Menomonie and Waseca proposals if a special reference point is used for the Menomonie substitution.[4] Phillips believes that the simultaneous upgrading of Stations KOWO-FM and WMEQ(FM) would best serve the public interest in that it would maximize the service provided by each station.

3. In order to proceed with the proposals in this proceeding, it is necessary to issue an Order to Show Cause to Station WOSX, Channel 221A, Spencer, Wisconsin, why their license should not be modified to specify operation on a different Class A Channel. To prevent foreclosure of this opportunity for Phillips to receive an upgrade at Menomonie, we shall propose the substitution of Channel 222A for Channel 221A at Spencer, Wisconsin, as follows:

	Channel No.	
Community	Delete	Add
Spencer, Wisconsin	221A	,222A

Phillips Broadcasting Company, Inc. has acknowledged a responsibility to reimburse Hackman Broadcasting[5] for the reasonable and prudent expenses Station WOSX would incur in changing to another Class A channel. A staff analysis confirms that Channel 222A can be allotted to Spencer at the licensed site for Station WOSX.[6]

4. The Commission has made a preliminary determination that the public interest would be advanced by allotting Channel 221C3 to Waseca, Minnesota, and Channel 221C3 to Menomonie, Wisconsin, and modifying their license accordingly to specify the higher class channel. A final determination regarding these amendments to the Table must await the outcome of this Show Cause Order concerning the license modification of Station WOSX, Spencer, Wisconsin, as discussed herein. Although Station WOSX is provided an opportunity to object to the ordered channel change, this Order does not afford additional opportunity either to comment on the merits of the conflicting proposals or for the acceptance of additional counterproposals.

5. Accordingly, IT IS ORDERED, that pursuant to Section 316(a) of the Communications Act of 1934, as amended, Hackman Broadcasting, licensee of Station WOSX, Spencer, Wisconsin, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 222A instead of Channel 221A.

6. Pursuant to Section 1.87 of the Commission's Rules, Hackman Broadcasting may not later than **December 10, 1990,** file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Hackman Broadcasting to furnish information. If Hackman Broadcasting raise a substantial and material question of fact, a hearing may be required to resolve such question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Hackman Broadcasting will be deemed to have consented to the modification as proposed in the Order to Show Cause, and a final Order will be issued by the Commission if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to

Hackman Broadcasting	DN Communications, Inc.
702 Willow Drive	RR 2, Box 106A
Spencer, Wisconsin 54479	La Crescent, Minnesota 55947

8. A copy of any comments filed by Hackman Broadcasting in this proceeding should be served on the following parties:

John S. Neely
Miller & Fields, P.C.
P.O. Box 33033
Washington, D.C. 20033
(Counsel for Waseca Communications, Inc.)

Matthew H. McCormick
Reddy, Begley & Martin
2033 M Street, N.W., Suite 500
Washington, D.C. 20036
(Counsel for Phillips Broadcasting Company, Inc.)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communities of Menomonie and Spencer, Wisconsin, have been added to the caption.

[2] Public Notice was given September 20, 1989, Report No. 1796 (RM-6998).

[3] In addition, Dale A. Ganske, president of Dri-Five, Inc. ("Ganske"), filed an opposition to Phillips' counterproposal, and Phillips filed a motion to strike Ganske's opposition. On November 9, 1989, Ganske withdrew his comments. Therefore, Phillips' motion to strike is moot.

[4] Phillips proposes to allot Channel 221C3 to Menomonie at coordinates 44-47-00 and 91-45-00.

[5] Hackman Broadcasting has filed an application for assignment of the license for Station WOSX to DN Communications, Inc. (BALH-891106HZ). Although the assignment has not been finalized, we shall serve a copy of this Order on DN Communications, Inc.

[6] The coordinates for Channel 222A at Spencer are 44-48-35 and 90-21-51.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-443

In the Matter of

Amendment of Section 73.202(b),	RM-7239
Table of Allotments,	
FM Broadcast Stations.	
(Sikeston, Missouri)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 25, 1990; Released: October 17, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Delta Radio Corporation (petitioner), requesting the substitution of FM Channel 250C3 for Channel 249A at Sikeston, Missouri. Petitioner also requests modification of its license for Station KSTG(FM), Channel 249A, to specify operation on Channel 250C3.

2. We believe petitioner's proposal warrants consideration. Channel 250C3 can be allotted to Sikeston, Missouri, in compliance with the Commission's Rules at petitioner's specified site.[1] We shall also propose to modify the license for Station KSTG(FM) to specify operation on Channel 250C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. In order to provide a wide coverage area station for Sikeston, Missouri, the Commission **PROPOSES TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Sikeston, Missouri	249A	250C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **December 10, 1990,** and reply comments on or before **December 26, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Harry C. Martin
Troy F. Tanner
Reddy, Begley & Martin
2033 M Street, N.W.
Washington, D.C. 20036

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits

or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 250C3 are 36-57-30 and 89-32-05.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-444

In the Matter of

Amendment of Section 73.202(b),	RM-7240
Table of Allotments,	
FM Broadcast Stations.	
(Dexter, Maine)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 27, 1990; Released: October 17, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Daniel F. Priestley (petitioner), requesting the substitution of Channel 271C2 for Channel 271A at Dexter, Maine. Petitioner also requests modification of his construction permit for Channel 271A to specify operation on Channel 271C2.

2. We believe petitioner's proposal warrants consideration. Channel 271C2 can be allotted to Dexter, Maine, in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site.[1] Since Dexter is located within 320 kilometers (200 miles) of the U.S. - Canadian border, concurrence of the Canadian government will be requested. The proposal must conform with the technical requirements of Section 73.1030(c)(1)-(5) of the Rules regarding protection to the Commission's monitoring station at Belfast, Maine. We shall also propose to modify the construction permit for Channel 271A, Dexter, Maine, to specify operation on Channel 271C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. In view of the fact that the proposed allotment could provide a wide coverage area station for Dexter, Maine, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Dexter, Maine	271A	271C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **December 10, 1990,** and reply comments on or before **December 26, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Patricia A. Mahoney
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 271C2 are 45-01-00 and 69-00-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-445

In the Matter of

Amendment of Section 73.202(b),	RM-7323
Table of Allotments,	RM-7425
FM Broadcast Stations.	
(Brooksville or Quitman,	
Mississippi)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 27, 1990; Released: October 17, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration two mutually exclusive petitions for rule making. The first was filed by Quitman Broadcasting Company, Inc. (Quitman Broadcasting), licensee of FM Station WYKK(FM), Channel 255A, Quitman, Mississippi, seeking the substitution of Channel 255C3 for Channel 255A at Quitman, Mississippi, and modification of its license to specify operation on the new channel.[1] The second petition was filed by G. Dean Pearce (Pearce), proposing the allotment of Channel 255C3 to Brooksville, Mississippi, as that community's first local service. Both parties expressed their intention to apply for the channel, if allotted to their respective communities.

2. The proposals are mutually exclusive because the distance between the communities is less than the 153 kilometers required for Class C3 co-channel allotments. Therefore, the channel can be allotted to only one of the communities in compliance with the minimum distance separation requirements of Section 73.202 of the Commission's Rules. Our initial engineering study identified Channel 255C3 as the only Class C3 channel available for Brooksville. Channel 255C3 can be substituted for Channel 255A at Quitman at petitioner's specified site.[2] Channel 255C3 can be allotted to Brooksville, Mississippi, provided there is a site restriction 12.6 kilometers (7.8 miles) northeast of the community. [3] The site restriction will prevent a conflict with a construction permit for Station WYMX, Channel 256C, Greenwood, Mississippi (BPH-87022706). We shall provide the proponents an opportunity to demonstrate in comments which community should receive the requested allotment. In this regard the parties should be guided by the allotment criteria set forth in *Revision of the FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

3. In view of the above, we believe it would serve the public interest to solicit comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No. Present	Proposed
	OPTION I	
Quitman, Mississippi	255A	255C3
	OPTION II	
Brooksville, Mississippi	----	255C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **December 10, 1990,** and reply comments on or before **December 26, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Herman Kelly,
President
Quitman Broadcasting
Company, Inc.
Montrose Road
Quitman, Mississippi 39355

Paul Reynolds
415 North College Street
Greenville, Alabama 36037
(consultant to Quitman
Broadcasting Co.)

G. Dean Pearce
1169 Northwood Lake
Northport, Alabama 35476

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Station WYKK(FM) was ordered from Channel 252A to Channel 255A in MM Docket 87-432, effective October 13, 1988.

[2] The coordinates for Channel 255C3 at Quitman are 32-07-50 and 88-42-00.

[3] The coordinates for Channel 255C3 at Brooksville are 33-19-54 and 88-30-39.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-311

In the Matter of

Amendment of Section 73.202(b), RM-7195
Table of Allotments,
FM Broadcast Stations.
(Oak Grove, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 17, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Oak Grove Broadcasting (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 3774 (1990), proposing to allot Channel 283C2 to Oak Grove, Florida, as that community's first local broadcast service. Petitioner filed a request for withdrawal of its petition for rule making.

2. In accordance with Commission policy, we will grant petitioner's request for the withdrawal of its rule making proposal.

3. Accordingly, IT IS ORDERED, That the petition for rule making of Oak Grove Broadcasting, seeking the allotment of Channel 283C2 to Oak Grove, Florida, IS DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

RAO Letter 16
October 5, 1990

Released: October 18, 1990

Responsible Accounting Officers:

Re: Classification of Enhanced Services for Federal Accounting Purposes

In *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990), the United States Court of Appeals for the Ninth Circuit vacated and remanded the orders in the *Computer III* proceeding[1] that preempted state regulation of the provision of enhanced services by communications common carriers.[2] This letter instructs carriers subject to the Commission's cost allocation rules to continue classifying enhanced services as nonregulated activities for federal accounting purposes on an interim basis, pending further consideration of this matter.

Section 32.23(a) of the Commission's Rules, 47 C.F.R. §32.23(a), describes the circumstances under which carriers are to classify their activities as nonregulated for federal accounting purposes. That section provides in part that preemptively deregulated activities must be classified as nonregulated activities. It also provides that activities that have been deregulated at the interstate level, but not preemptively deregulated, are to be classified as regulated activities until the Commission decides otherwise.

Because enhanced services were preemptively deregulated prior to the decision in *California v. FCC*, Section 32.23(a) required carriers to classify those services as nonregulated activities for federal accounting purposes. In the absence of preemption, however, Section 32.23(a) would require regulated accounting for federal purposes until the Commission decides otherwise. Although the Court did not address the subject, we believe that we should issue interim procedures for carriers to follow pending further consideration of this matter. [3]

The nonregulated classification is the means the Commission has used to ensure that interstate ratepayers do not bear the costs and risks of carrier enhanced services operations. We believe that we should continue that classification on an interim basis pending a decision as to a permanent accounting classification. Retaining that classification on an interim basis will minimize the possibility of cost misallocations without making unnecessary demands on federal, state, and carrier resources.[4] In contrast, conversion to an interim regulated classification would impose significant costs and would unnecessarily complicate the already difficult task of ensuring that interstate telephone rates are just and reasonable. Such a conversion would require changes in the Commission's cost allocation and access charge rules and policies, in the internal accounting systems carriers use to implement those rules and policies, and in the automated reporting management information system (ARMIS) the Commission uses to evaluate the carriers' internal accounting systems. These costs and unnecessary complications should be avoided while the permanent federal accounting treatment for enhanced services is under consideration.

Accordingly, we require all carriers subject to the Commission's cost allocation rules to continue classifying their enhanced services operations as nonregulated activities for federal accounting purposes on an interim basis. We emphasize that this interim accounting requirement does not affect the states' ability to determine the accounting and ratemaking practices carriers should follow for intrastate purposes. As the Commission has repeatedly made clear, the federal procedures for allocating costs between regulated and nonregulated activities leave the states free "to employ different cost allocation methods...in intrastate ratemaking, and to mandate that carriers keep any side records required for the states' regulatory purposes."[5]

This letter is issued pursuant to authority delegated under Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291. Applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. §1.115, must be filed within 30 days of the date of this letter. *See* 47 C.F.R. §1.4(b)(2).

Sincerely,

Kenneth P. Moran
Chief, Accounting and Audits Division

FOOTNOTES

[1] Amendment of Sections 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, Report and Order, 104 FCC Rcd 958 (1986)(*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987)(*Phase I Reconsideration*), *further recon.*, 3 FCC Rcd 1135 (1988)(*Phase I Further Reconsideration*), *second further recon.*, 4 FCC Rcd 5927 (1989)(*Phase I Second Further Reconsideration*), *Phase I Order* and *Phase I Reconsideration vacated sub nom.* California v. FCC, supra, appeal pending sub nom. Illinois Bell Telephone Co. v. FCC, No. 88-1364 (D.C. Cir. pet. for review filed May 16, 1988); *Phase II Order*, CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987), *recon.*, 3 FCC Rcd 1150 (1988)(*Phase II Reconsideration*), *further recon.*, 4 FCC Rcd 5927 (1989)(*Phase II Further Reconsideration*), *Phase II Order vacated sub nom. California v. FCC, supra, appeal pending sub nom. California v. FCC*, No. 88-7183 (9th Cir. filed May 13, 1988)

[2] The Court vacated the *Phase I Order*, the *Phase I Reconsideration*, and the *Phase II Order*.

[3] *See Inside Wiring Accounting Order*, 5 FCC Rcd 3521, 3524 (1990), *petition for recon. pending; cf. Mid-Tex Electric Cooperative Inc. v. FERC*, 822 F.2d 1123 (D.C. Cir. 1987)(agency may adopt interim measures to remain in effect during court-ordered remand proceedings).

[4] *Compare Inside Wiring Accounting Order*, 5 FCC Rcd at 3523.

[5] Separation of Costs of Regulated Telephone Services from Costs of Nonregulated Activities, *Report and Order*, 2 FCC Rcd 1298, 1310 (1987)(*Joint Cost Order*), *recon.*, 2 FCC Rcd 6283 (1987), *further recon.*, 3 FCC Rcd 6701 (1988), *aff'd sub nom.* Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990); *accord Inside Wiring Accounting Order*, 5 FCC Rcd at 3523. Carriers are, however, required to follow the Commission's

jurisdictional separations rules. Hawaiian Telephone Co. v. PUC, 827 F.2d 1264 (9th Cir. 1987), *cert. denied,* 403 U.S. 923 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company — Transmittal Nos. 2460 and 2584

Revisions to Tariff F.C.C. No. 12

ORDER

Adopted: October 5, 1990; Released: October 9, 1990

By the Chief, Common Carrier Bureau:

1. American Telephone and Telegraph Company (AT&T) has filed Transmittal Nos. 2460 and 2584 to introduce Virtual Telecommunications Network Service (VTNS) Option 58 by which AT&T will provide voice and data communications service among locations in the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. Following substantially complete installation, the rates for this option are stabilized throughout a three-year term. AT&T Transmittal No. 2460, Description and Justification (D&J) at 1-4. The basic charge for VTNS Option 58 is $26,100 per month. AT&T will reimburse the customer for interexchange carrier change charges imposed by local exchange companies when applicable to customer-specified non-port locations. The reimbursement will be applied as a credit to the basic charge in the month incurred and may not exceed a total of $270,000 during the multi-year service period. AT&T Transmittal No. 2584, Tariff F.C.C. No. 12, Section 7.60.2.A. Option 58 is scheduled to become effective October 15, 1990.

2. US Sprint Communications Company Limited Partnership (Sprint) and MCI Telecommunications Corporation (MCI) filed petitions to reject, or alternatively, to suspend and investigate AT&T Transmittal No. 2460 on August 16, 1990. The Independent Data Communications Manufacturers Association, Inc. (IDCMA) filed a letter opposing AT&T Transmittal No. 2460 on August 21, 1990. MCI filed a letter further opposing AT&T Transmittal No. 2460 on August 27, 1990. AT&T filed a reply on August 27, 1990.

3. Sprint argues that AT&T has failed to demonstrate that Option 58 is an integrated service package that is "unlike" AT&T's other component services. Sprint Petition at 1-2. Moreover, Sprint contends that AT&T's provision of 59 individual VTNS offerings makes clear that each such offering is designed for one customer. Additionally, Sprint maintains that various specifications in the transmittals also effectively restrict the offering to one customer. Sprint further argues that the individualized pricing of VTNS options is comparable to the local exchange carriers' individual case basis (ICB) rates for DS3 service, that AT&T now has sufficient experience to develop general rates, and that the Commission thus should order AT&T to offer these rates under a generally available tariff, as it did in the ICB DS3 case. *Id.* at 2-4. Additionally, Sprint alleges that AT&T's projected 1990 revenue from all Tariff 12 VTNS options now exceeds $1 billion and likely accounts for more than 2 percent of the entire interexchange market. *Id.* at 4. Sprint also alleges that AT&T's cost support for Option 58 is "seriously deficient" and incorporates by reference the arguments against VTNS Options 17, 18, and 19 (AT&T Transmittals 1810, 1826, and 1832, respectively). *Id.* at 4 & 5 n.4.[1]

4. MCI contends that Option 58 bundles AT&T 800 service with other voice services and applies price and revenue discounts to the combined usage of the customer, thereby unlawfully conditioning the availability of the higher discounts on the combined use of voice services. MCI Petition at 2-3. MCI objects to the provision of Option 58 that permits a customer to make off-network to off-network calls through the use of authorization codes on the grounds that this is effectively the provision of ordinary MTS service among public switched network locations at preferential prices. *Id.* at 3-4. MCI also opposes the tariff provision permitting the Option 58 customer to specify and make calls between non-port and other locations. *Id.* at 3 n.4. Additionally, MCI maintains that Option 58 requires only revenue, and not volume, commitments. MCI argues that this does not give AT&T any assurance that a particular volume of traffic will be sent over its facilities. *Id.* at 4 n.5.

5. AT&T replies that the rates in Option 58 are not unjustly discriminatory because the Communications Act prohibits discrimination only between "like" services, and the Commission has held that Tariff 12 integrated service packages are not "like" the component services offered in separate tariffs. AT&T Reply at 6-7. AT&T also argues that the Commission has consistently found AT&T's standard, Commission-sanctioned cost systems sufficient to support AT&T's Tariff 12 filings. AT&T contends that these methods satisfy the requirements of Section 61.38 of the Commission's Rules. *Id.* at 9-10 & 10 n.****. AT&T also denies that it is unlawfully bundling 800 service with other voice services. *Id.* at 3-5. In addition, AT&T maintains that Option 58 does require a volume commitment. *Id.* at 5 n.***.

6. The Common Carrier Bureau has reviewed AT&T Transmittal Nos. 2460 and 2584, Sprint's and MCI's petitions, and related pleadings. We conclude that no compelling argument has been presented that this tariff is so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

7. Accordingly, IT IS ORDERED that the petitions to reject, or to suspend and investigate, American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 2460, filed by US Sprint Communications Company Limited Partnership and MCI Telecommunications Corporation, ARE DENIED.

8. IT IS FURTHER ORDERED that the letters against American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 2460, filed by the Independent Data Communications Manufacturers Association, Inc. and MCI Telecommunications Corporation, ARE DISMISSED.

9. IT IS FURTHER ORDERED that American Telephone and Telegraph Company is granted permission to advance the effective date of the revisions proposed in

Transmittal Nos. 2460 and 2584. The filing to advance SHALL BE FILED to become effective on not less than one day's notice.

10. IT IS FURTHER ORDERED that for the above purpose, Special Permission No. 90-1088 is assigned, and Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59, are waived.

11. IT IS FURTHER ORDERED that this Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Sprint maintains that the arguments raised against those transmittals continue to be valid because the Bureau has not addressed these arguments on the merits in any previous Order. Sprint Petition at 5.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 90-357

In the Matter of

Amendment of the Commission's Rules
with regard to Establishment
and Regulation of New Digital Audio
Radio Services

ORDER GRANTING EXTENSION OF TIME

Adopted: October 9, 1990; Released: October 10, 1990

By the Office of Engineering and Technology:

1. The Association of Independent Television Stations, the Association of Maximum Service Telecasters, Inc., Bonneville International Corporation, the National Association of Broadcasters, and Tribune Broadcasting Company (Requesting Parties), have jointly requested an extension of the comment and reply comment periods in the above proceeding to November 26, 1990, and December 28, 1990, respectively. Comments are currently due October 12, 1990, and reply comments are currently due November 13, 1990. *See Notice of Inquiry* (*Notice),* GEN Docket No. 90-357, 5 FCC Rcd 5237 (1990).

2. The Requesting Parties state that the Commission has undertaken nothing less than a broad reexamination of the provision of radio services in the United States. They note that the Commission's *Second Notice of Inquiry* in preparation for the 1992 World Administrative Radio Conferernce (WARC NOI) also requests comment on the possible allocation of spectrum for digital audio radio services. The requesting parties claim that the record in this proceeding and in the WARC NOI would benefit from coordinated consideration of these interrelated issues. They also claim that a modest extension of time will enable commenters to provide the Commission with more refined and specific input with respect to the issues raised in the digital audio radio services proceeding.

3. We believe that additional time for filing comments and reply comments is warranted. The Commission desires as complete a record as possible to assist in formulating its digital audio radio service proposals. However, we believe that a thirty day extension of the comment and reply comment periods should be sufficient. Accordingly, pursuant to authority found in Section 4(i), 302, and 303 of the Communications Act of 1934, as amended, IT IS ORDERED that the comment period in this proceeding IS EXTENDED to November 13, 1990, and the reply comment period IS EXTENDED to December 14, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMMUNICATIONS SATELLITE CORPORATION — File No. CSS-89-004

For authority to participate in an INTELSAT program involving the possible acquisition of additional satellite capacity in one or more of the three ocean regions

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: August 28, 1990; Released: October 18, 1990

By the Commission:

1. The Commission has under consideration an application filed on May 30, 1989 by Communications Satellite Corporation (Comsat) requesting such authority as may be necessary pursuant to Section 201 of the Communications Satellite Act of 1962, as amended, 47 U.S.C. §721(c) and Sections 214, 308 and 319 of the Communications Act of 1934, as amended, 47 U.S.C. §§214, 308 and 319, to participate in an INTELSAT program to acquire additional satellite capacity in one or more of the three ocean regions. The capacity, if acquired, would become an integral part of INTELSAT's global communications satellite system.

2. The application was placed on public notice on June 21, 1989. Pan American Satellite (PAS) and Orion Network Systems, Inc. (Orion) filed petitions to deny Comsat's application. GTE Spacenet Corporation (GTE Spacenet) and IDB Communications Group, Inc. (IDB) filed comments in response to the application. Columbia Communications Corporation (Columbia) filed a petition requesting the Commission to delay grant of that portion of the application dealing with INTELSAT's proposed acquisition of Tracking and Data Relay Satellite System (TDRSS) capacity.[1]

I. THE APPLICATION

3. Comsat states that INTELSAT is currently experiencing capacity shortages due to greatly increased demand for the services of its Signatories. According to Comsat, these shortages affect all three ocean regions - the Atlantic Ocean Region (AOR), the Pacific Ocean Region (POR) and the Indian Ocean Region (IOR) - and will not be alleviated substantially by the deployment of the INTELSAT VI series satellites[2] or the anticipated deployment of the INTELSAT VII series satellites. [3]

4. To deal with the shortages that it foresees, Comsat states that INTELSAT determined to acquire and modify an all Ku-band spacecraft, the Satcom K-4, to serve the AOR.[4] The Satcom K-4 spacecraft is currently being manufactured and could be launched and available for service in late 1991. INTELSAT also sought to obtain usage rights to the C-band capacity on two TDRSS satellites already in orbit in the AOR and POR. Finally, to meet the requirements in the IOR, INTELSAT considered the acquisition of capacity on a C-band spacecraft, the Arabsat-1C, from the Arabsat consortium.

5. Comsat indicates that INTELSAT was initially the successful bidder with respect to the TDRSS C-band capacity. However, on January 30, 1990, Columbia, the other bidder, was granted injunctive relief against NASA which barred NASA from proceeding to sell exclusive control of the capacity to INTELSAT until NASA refers to the Small Business Administration the question of whether Columbia is a "responsible" customer to purchase capacity pursuant to the Small Business Act, 15 U.S.C.A. §637(b)(7)(A) (West Supp. 1989).[5] Columbia petitioned the Commission to withhold action on Comsat's request to participate in the INTELSAT procurement of TDRSS capacity pending resolution of the administrative remedies ordered by the court. Comsat requested the Commission to hold in abeyance that portion of its application dealing with the TDRSS capacity.[6] However, in a letter dated May 17, 1990 the Small Business Administration certified that Columbia is "responsible" to perform the lease agreement covering the TDRSS capacity and required NASA to award the contract to Columbia.[7] On June 8, 1990 NASA awarded the contract for TDRSS C-band capacity to Columbia. Additionally, Comsat informed the Commission that acquisition of Arabsat capacity was no longer under active consideration by INTELSAT, and requested the Commission to defer its review of that portion of the application.

6. In light of these developments, we will dismiss those portions of Comsat's application regarding acquisition of Arabsat and TDRSS capacity. Accordingly, this order will focus only on INTELSAT's proposed acquisition of the Satcom K-4 satellite for the provision of high-power Ku-band capacity.

7. On July 11, 1989 a contract was signed between INTELSAT and GE Astro Electronics, Inc. for the modification and delivery of the Satcom K-4 satellite by May 15, 1991. The contract calls for INTELSAT to pay $86.7 million in real year dollars for the satellite, plus in-orbit incentives totalling approximately $15 million.[8] The Satcom K-4 satellite was originally designed for TV distribution services to the continental U.S. and Hawaii. According to Comsat, several minor payload modifications are necessary to make the Satcom K-4 suitable for INTELSAT uses. Comsat observes that the modifications are consistent with the design of the spacecraft and should be achievable without significant risk. The modifications will allow high-powered, two-way coverage of Europe and North America and receive-only coverage of Latin America to satisfy requirements for international television services. Comsat notes that the satellite's useful coverage of the U.S. would likely extend to Illinois and Wisconsin (depending on orbital location), but would not include states west of the Mississippi. Comsat adds that Western Europe would likely be covered as far east as Italy.

II. DISCUSSION

8. The primary issue presented by Comsat's application is whether there is sufficient justification for the procurement of the Satcom K-4 satellite at this time. In deciding whether to authorize Comsat's participation in this procurement, we consider planned INTELSAT satellite capacity and the traffic projections generated as a result of the 1988 and 1989 Global Traffic Meetings (GTMs). In addition, we consider below: 1) the sufficiency of technical information with respect to interference concerns; 2) whether the satellite should comply with the Commission's *Separate Systems* decision[9] with respect to technical standards; 3) whether the procurement of the Satcom K-4 satellite should be pursuant to Articles III(e) and V(e) of the INTELSAT Agreement; and 4) whether Comsat's application is procedurally defective.

A. The Need for the Satcom K-4 Satellite

9. *Current and Planned AOR Satellite Configuration.* The procurement of the Satcom K-4 satellite is based on a projected shortfall in facilities in the AOR in the time frame between the INTELSAT VI and INTELSAT VII deployments. The last INTELSAT VI satellite is scheduled to be launched in 1991. The first INTELSAT VII satellite would not be deployed in the AOR until 1993. The INTELSAT VI and VII series satellites deployed in the AOR would replace existing INTELSAT VA satellites that will reach the end of their design life in the 1989-1995 time frame.

10. The Satcom K-4 satellite would add a seventh satellite to the configuration that had been projected for the AOR: (1) three mid-ocean region high connectivity/trunking locations; (2) two rim-role locations with unique coverage/connectivity features; and (3) one in-orbit system spare. The three mid-ocean roles (one Primary and two Major Path satellites) are necessary to provide basic connectivity along with major trunking capacity to serve the AOR. The AOR Primary (at 335.5^{0}E) is a high connectivity satellite that provides services to a total of 80 antennas in 69 countries throughout the region. Larger traffic streams are accommodated on the two Major Path satellites at 325.5^{0}E and 342^{0}E which also provide additional West-West and East-East connectivity, respectively. These three satellites are collectively required to accommodate the bulk of the high density traffic in the AOR.

11. The two rim locations (307^{0}E and 359^{0}E) are used to accommodate more specialized requirements. The 307^0 E satellite is important because it is the only satellite to provide full CONUS coverage of the U.S. and serves as the principal AOR satellite to provide INTELSAT Business Service (IBS), for which the full CONUS coverage is well suited. The full CONUS capabilities of this satellite allow direct C-band and Ku-band trans-Atlantic links to and from the entire continental U.S. In recent years, there has been a proliferation of requests by U.S. carriers to own and operate their own earth stations for the provision of IBS. The 307^0 E satellite is accessed by over thirty IBS earth stations in the United States, and Comsat has indicated that INTELSAT IBS capacity is virtually saturated. The 359^{0}E satellite is the only orbital location that provides direct satellite links from the United States to Diego Garcia, much of the Middle East and the Indian subcontinent. This connectivity is important for U.S. defense interests (DoD requirements for service to Diego Garcia) and for U.S. carriers. The in-orbit system spare is located at 332.5^{0}E.

12. Because INTELSAT's acquisition and deployment of the Satcom K-4 satellite would add a seventh satellite to this configuration, we must examine whether the capacity available on the INTELSAT VI satellites in the AOR would be sufficient to accommodate current and projected traffic requirements. We also consider whether the addition of the INTELSAT VII satellites in the AOR in 1993 would have any impact on projected traffic requirements.

13. *Traffic Projections.* In support of its application, Comsat states that capacity shortages are particularly acute in the AOR. Comsat references the information provided in its INTELSAT VII application regarding increasing demand for Signatory services, and the resulting strain on both near and longer term system capacity. The referenced data was based on the 1988 Director General (DG) Forecast, which was generated as a result of the 1988 GTM, and 1988 year-end actuals. Since then, INTELSAT has held its 1989 GTM which, Comsat states, demonstrates that overall traffic forecasts and system utilization ratios for the five year planning period 1990-1994 are even higher than they were in 1988. Comsat further states that even before the 1989 GTM, Signatories had indicated to the Director General that additional demand existed and that there was a significant additional requirement for Ku-band capacity, particularly in the AOR.[10] In addition, Comsat cites input from its customers in 1988 and 1989 which indicated substantial new demand, particularly for IBS and video services.

14. In the AOR, the 1988 DG Forecast projects that Category A services[11] will increase from 55,962 bearer half-circuits in 1989 to 62,200 by the year 2000. The 1988 DG Forecast projects significant growth in Category B services as well. For example, IBS use is anticipated to increase from 7,276 64 Kbps equivalent channels in 1989 to 9,790 in 1993 and to 19,014 by the year 2000. International TV leases are projected to increase from 37.3 36-MHz equivalent channels in 1989 to 55.0 in 1993 and 73.5 by the year 2000. Based on these projections of traffic growth, the 1988 DG Forecast projects 83% utilization in the AOR in 1993 and in excess of 100% by the year 2000, assuming no launch failures. These utilization levels are substantially higher than the 1987 DG Forecast, which projected utilization levels of 58% in 1993 and 73% by the year 2000.[12]

15. With the introduction of three INTELSAT VI satellites in the AOR in the 1989-1991 time frame, Comsat states that there will only be three 36-MHz equivalent Ku-band transponders available for transatlantic use.[13] A review of INTELSAT documents indicates that, based on the projected increases in traffic set forth in the 1988 DG Forecast, INTELSAT predicts shortfalls in both AOR C-band and Ku-band capacity. With respect to AOR Ku-band capacity, INTELSAT predicts this shortfall to be about 17 Ku-band 36-MHz equivalent units in 1993.[14] As a result of the 1989 GTM, INTELSAT predicts the shortfall in Ku-band capacity to be 49 36-MHz units by 1994.[15] Based on this analysis, we conclude that there will not be sufficient Ku-band capacity to meet forecasted demand between the launch of the last INTELSAT VI satellite in 1991 and the introduction of the INTELSAT VII satellites beginning in 1993.[16]

16. Moreover, Comsat has demonstrated that utilization rates in the AOR will not decrease significantly with the introduction of the Satcom K-4 satellite and the INTELSAT VII satellites. Comsat notes that AOR utilization will be approximately 83% in 1993 with the deployment of the INTELSAT VII satellites. With the addition of the Satcom K-4 satellite in the AOR, total available capacity in 1993 (the time frame of the first INTELSAT VII deployment in the AOR) will increase from 404 36-MHz transponders to 428 36-MHz transponders, and total traffic[17] is projected to increase from 335.2 to 359.2 36-MHz transponders, with utilization projected at 84%. Without the addition of Satcom K-4 capacity, total traffic in the AOR by the year 2000 is projected at 467.9 36-MHz transponders with a corresponding utilization rate of approximately 107%. With the addition of Satcom K-4 capacity, the total available capacity by the year 2000 will increase from 438 36-MHz transponders to 462 36-MHz transponders, and the total traffic is projected at 491.9 36-MHz transponders, resulting in a utilization rate of 106%. Based on this data, it appears that with the significant increase in traffic projected in the 1988 DG Forecast and INTELSAT's analysis of the 1989 GTM, the addition of the Satcom K-4 satellite will not result in significantly lower region-wide utilization levels even with the addition of the INTELSAT VII satellites.

17. It also does not appear that the deployment of the first INTELSAT VII satellite in the AOR in 1993 could be expected to satisfy the particular requirements projected for the Satcom K-4 satellite. The first INTELSAT VII to be deployed in the AOR would be located at the 359^{0}E orbital slot. As noted above, this satellite is the only one that provides direct satellite links from the United States to Diego Garcia as well as to the Middle East and the Indian subcontinent. Due to its "rim" orbital location, this satellite can only "see" the easternmost part of the United States. Because of the limited coverage of the U.S. provided by the 359^{0}E orbital location, currently only the AT&T earth station at Coram, New York and the MCI earth station at Andover, Maine access it. In contrast, Comsat states that the useful coverage of the Satcom K-4 satellite would likely extend to Illinois and Wisconsin in the United States. As a result, the Satcom K-4 satellite would provide greater flexibility for U.S. customers to access INTELSAT space segment capacity. The Satcom K-4 satellite is also designed to provide receive-only coverage to all of Latin America, whereas the 359^{0}E orbital location provides only very limited coverage of Central America. Thus, the Satcom K-4 satellite would ostensibly meet requirements that could not be serviced entirely via the INTELSAT VII satellite to be deployed at the 359^{0}E orbital location. In view of these circumstances, it appears that without the deployment of the Satcom K-4 satellite in 1991, no additional INTELSAT capacity would be available in the AOR to accommodate projected shortfalls in capacity until 1995 when the remaining two INTELSAT VII satellites would be deployed in the AOR. This conclusion is also supported by INTELSAT's prediction that the shortfall in AOR Ku-band capacity will increase from 17 to 49 36-MHz units by 1994, one year after the projected deployment of an INTELSAT VII satellite at the 359^{0}E location.

18. It is also doubtful whether the remaining INTELSAT VII satellites could meet the particular demand projected for the Satcom K-4 satellite. As noted previously, the 307^{0}E orbital location is designed to meet specialized IBS requirements. It is the only satellite that provides full CONUS coverage which allows direct C-band and Ku-band transatlantic links from the entire continental U.S. In recent years, there has been a proliferation of IBS earth stations in the U.S., and Comsat states that IBS capacity is virtually saturated. Since the INTELSAT VII satellite would replace an existing INTELSAT VA satellite that would reach the end of its design life in 1995, substantial IBS traffic would be transferred to this satellite. Moreover, with IBS use anticipated to increase from 7,276 64-kbps equivalent channels in 1989 to 9,790 in 1993 and to 19,014 by the year 2000, it is doubtful that the INTELSAT VII satellite to be deployed at the 307^{0}E orbital location would have capacity available to meet forecasted demand.

19. The final INTELSAT VII satellite to be deployed in the AOR, in the 1994/1995 time frame at the 342^{0}E orbital location, assumes no launch failures of planned INTELSAT VI and INTELSAT VII satellites. The 342^{0}E orbital location accommodates larger traffic streams and together with the AOR Primary satellite at 335.5^{0}E and Major Path satellite at 325.5^{0}E handles the bulk of high density traffic in the AOR. Because the INTELSAT VII to be located at the 342^{0}E orbital location would replace an existing satellite, substantial traffic would be transferred to this satellite once it is deployed. As noted above, INTELSAT projects a shortfall of 17 36-MHz Ku-band units by 1993 and 49 36-MHz Ku-band units in the AOR by 1994.[18] This projected shortfall is a result of INTELSAT traffic projections based on the 1989 GTM and did not form the basis for the need for the INTELSAT VII satellites. Even with the deployment of the Satcom K-4, only twenty-four 36-MHz Ku-band units would be provided to handle this projected shortfall. Thus, deployment of the Satcom K-4 satellite is needed to accommodate this projected shortfall in AOR Ku-band capacity, a requirement distinct from the basis for authorizing the procurement of INTELSAT VII satellites.

20. No party denies that there has been an increase in traffic demand in the AOR. IDB complains about the current shortage of available INTELSAT capacity, particularly for occasional use video services.[19] We believe that Comsat has adequately demonstrated that this shortage will be exacerbated without action to procure sufficient capacity to meet projected needs. In light of significant growth of forecasted demand in the AOR and the predicted shortfalls in AOR Ku-band capacity, we conclude that even with the additional capacity that will be available in the AOR with the introduction of the three INTELSAT VI satellites by 1991, there will not be sufficient capacity in the AOR to meet projected video traffic requirements. In view of the capacity shortfall predicted by INTELSAT in the face of increased traffic projections, we believe that procurement of the Satcom K-4 satellite is reasonable in light of the need to satisfy, as well as compete for, this demand.

21. Orion objects to the proposed procurement on the basis that, *inter alia*, INTELSAT has not taken into account the ability of separate systems to satisfy the increased demand identified by INTELSAT. We recognize that the services to be provided over the Satcom K-4 satellite are the type that can be provided over separate systems. However, in authorizing separate systems, we created a competitive environment in which decisions whether to procure capacity would be based on reasoned business judgments. We rejected the argument that au-

thorization of separate systems should not be permitted because their entry would lead to a gross imbalance between supply and demand. We noted that separate systems will stimulate the demand for communications services and increase the overall size of the international communications market.[20] We further recognized that such enterprises are risk ventures with no guarantee of traffic and revenues.[21] Thus, we do not expect INTELSAT to concede any portion of its forecasted demand for satellite service to separate systems. It is our expectation that INTELSAT will act reasonably and prudently in making facilities procurement decisions, taking into consideration that part of the market may be captured by competitors. At the same time, it is not in the public interest to restrain INTELSAT from procuring adequate capacity to serve competitive markets. We continue to believe that the full benefits of competition can be best realized if procurement decisions are the product of sound business judgment and not regulatory prescription.

22. Orion additionally urges the Commission to disregard a March 2, 1990 letter, *supra* note 6, in which, *inter alia*, Comsat appealed to this Commission for immediate grant of its application. Orion argues that Comsat improperly based its appeal on expressions of marketplace interest in Satcom K-4, because Comsat's expenditures to generate that interest violate the spirit of Section 319 of the Communications Act. Comsat's letter, however, merely contained a vague and insubstantial reference to additional demand on which we need not, and do not, rely in authorizing its participation in the procurement. Moreover, we find no basis in Section 319 of the Act on which to grant Orion's additional request that the Commission order Comsat to discontinue sales of capacity in Satcom K-4 prior to receipt of authorization to participate in the procurement. Initially, we observe that Comsat denies having contracted to sell any capacity on Satcom K-4, stating that it has engaged only in promotional activities (to which Orion also appears to object). Further, without deciding that the instant authorization proceeding falls within Title III of the Act, we note that the Commission has never held in the context of an initial facility authorization that Section 319 prohibits an applicant from expending funds to market, or even from contracting to sell, a potential service.[22] Finally, as Comsat notes, Orion on previous occasions has informed the Commission that it has contacted potential customers for its proposed separate system.[23]

23. PAS cites INTELSAT's past history with respect to traffic projections as a basis for questioning INTELSAT's projections of continued traffic growth. We addressed the same argument raised by PAS in the context of Comsat's application to participate in the procurement of INTELSAT VII satellites. In the *INTELSAT VII Order*, we observed that although past INTELSAT traffic projections were based solely on the User Forecast, INTELSAT now provides two sets of projections in order to more accurately gauge the impact of various factors on traffic projections.[24] We viewed the wide disparity between the DG and User Forecasts as an indication that INTELSAT is concerned with the potential for overprojection and reliance on overstated projections as a basis for major procurement decisions.[25] Finally, given the speculative nature of traffic projections in general, and more specifically, INTELSAT's need to rely on the projections of its member countries, we concluded that INTELSAT has made a reasonable effort in recent years to improve its forecasting.[26] Nothing has been presented in the context of this proceeding to alter this conclusion.

24. Both Orion and PAS question Comsat's participation in the procurement because of their belief that the actual need for the Satcom K-4 satellite, insofar as Comsat is concerned, is "self-generated". We find no reason to question the need for the Satcom K-4 satellite merely because Comsat was one of the six Signatories that sent a telex to INTELSAT predicting capacity shortfalls in the AOR. The fact that five other Signatories were involved is an indication that Comsat is not the only Signatory that has recognized the need for additional capacity to accommodate present and near-term future traffic requirements.[27] The need for additional capacity expressed in that telex is also consistent with actual year-end traffic totals for 1988, which exceeded the projected totals in previous DG Forecasts.

B. Other Considerations

25. In its Petition to Deny and responsive pleadings, PAS argues that the potential for interference from the Satcom K-4 satellite to its existing and planned satellites requires withholding action on Comsat's participation in the procurement. INTELSAT has now decided to deploy the Satcom K-4 satellite at the 338.5^{0}E orbital location, 23.5 ^{0} away from the PAS-1 satellite and 21.5^0 away from the planned orbital location of the PAS-2 satellite. INTELSAT's selection of the 338.5^{0}E orbital location for the Satcom K-4 satellite reduces the risk of interference to existing and planned PAS satellites. Moreover, as Comsat notes, INTELSAT will have to initiate internetwork coordination pursuant to Article 11 of the International Telecommunication Union (ITU) Radio Regulations. Information required by Appendix 4 and, later, Appendix 3 of the Radio Regulations will have to be made available. Although the location of the Satcom K-4 satellite reduces the risk of interference to separate systems, the usual ITU coordination of satellite systems should resolve any interference concerns. Therefore, we find that there is no basis for delaying action on the instant application. Issues relating to potential interference from the Satcom K-4 satellite will be resolved in other forums in accordance with established procedures.

26. We also conclude that the technical issues raised by Orion do not warrant a delay in acting on the instant application. The fact that the Satcom K-4 satellite will not be subject to the same technical standards as U.S. separate systems, in particular, the frequency reuse requirements cited by Orion, is not relevant to the instant application. The Satcom K-4 satellite will be part of the INTELSAT global system, and the Commission has been presented here with no compelling reason to assert Title III jurisdiction over the technical standards used by INTELSAT for any of its satellites. While Orion also argues generally that the Satcom K-4 satellite will make inefficient use of the orbit/spectrum, and appears to suggest that the procurement therefore contravenes U.S. policies and positions with respect to the WARC-ORB 85 and WARC-ORB 88,[28] Orion has not specifically identified any aspect of U.S. policy or the outcomes of WARC-ORB 85 and WARC-ORB 88 which would preclude INTELSAT's procurement and deployment of the Satcom K-4 satellite.

27. Orion also believes that the procurement of the Satcom K-4 satellite should be considered pursuant to Article III(e) and Article V(e) of the INTELSAT Agree-

ment. Under these provisions, INTELSAT may provide, *inter alia*, satellites or associated facilities separate from the INTELSAT space segment for domestic public telecommunications.[29] Orion cites the telex to INTELSAT citing the need for "specifically tailored" transatlantic capacity to meet the needs of the Signatories. Based on this telex, Orion argues that INTELSAT's procurement of the Satcom K-4 satellite is designed to meet the particular needs of certain Signatories in the AOR and therefore requires consideration under Article III(e). We disagree. The Satcom K-4 procurement is clearly distinguishable from the categories of service set forth in Article III(e). The Satcom K-4 will be part of the INTELSAT global system and not separate from the INTELSAT system as envisioned in Article III(e). The fact that this satellite will only meet AOR traffic requirements and was only requested by six Signatories does not alter this conclusion. The satellite will be available to meet the requirements of other Signatories within the Satcom K-4 service area. Moreover, there is no basis for Orion's argument that, in order for a procurement to meet INTELSAT's prime objective and not be considered under Article III(e), it must pertain to every ocean region.[30]

28. PAS and Orion also allege that Comsat failed to comply with the Commission's 1974 Policy Statement which requires that Comsat file its applications at least 60 days before anticipated Board of Governors action on procurement matters.[31] Specifically, PAS argues that Comsat's application did not comply with this requirement because it was filed barely two weeks before the Board of Governors action and did not contain any financial information or sufficient technical information. Thus, PAS argues that the Commission did not have adequate time in which to evaluate Comsat's application and make an affirmative finding, prior to the Board of Governors action, that Comsat's participation in the procurement is in the public interest.

29. We decline to deny Comsat's application because it was filed less than 60 days before the INTELSAT Board of Governors decided to purchase the satellite. The purpose of policy statements is "to allow agencies to announce their 'tentative intentions for the future' . . . without binding themselves." *American Hospital Association v. Bowen*, 834 F.2d 1037, 1046 (D.C. Cir. 1987); *citing Pacific Gas & Electric v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974). In this situation, although we lacked 60 days to analyze Comsat's application prior to the Board of Governors' decision, no harm resulted because our decision to approve Comsat's application is not based on the fact that INTELSAT had already commited to purchase the satellite, and there was sufficient time following the Board of Governors' decision to review the application. Moreover, it appears that the sixteen-year old *Policy Statement* is inconsistent with the exigencies of the procurement process,[32] and we expect to reevaluate it in the near future.[33]

30. Finally, we reach no decision with respect to comments submitted by GTE Spacenet on the use of the INTELSAT system to routinely provide domestic links between U.S. locations. Applications are currently pending which specifically raise this issue, and GTE Spacenet has opposed those applications on the same grounds set forth in its comments.[34] Issues relating to the use of the INTELSAT system to provide U.S. domestic service will be addressed in the context of those pending applications.[35]

31. Accordingly, IT IS ORDERED that application File No. CSS-89-004 IS GRANTED and Comsat is authorized to participate in an INTELSAT program to procure and operate the Satcom K-4 satellite to be used in the AOR as part of the INTELSAT global system.

32. IT IS FURTHER ORDERED that the portion of Comsat's application which deals with the procurement of Arabsat and TDRSS capacity IS DISMISSED.

33. IT IS FURTHER ORDERED that the Petitions to Deny filed by PAS and Orion ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Comsat filed supplements to the application on August 3, 1989, and September 28, 1989. Subsequent to the close of the pleading cycle, PAS submitted a pricing study on May 15, 1990, to which responsive pleadings were filed. PAS withdrew its study on August 14, 1990. PAS submitted an additional letter on July 26, 1990. *See infra* note 23.

[2] *See Communications Satellite Corporation*, File No. CSS-82-001-P, FCC 84-236, released May 25, 1984. On March 14, 1990, the attempted launch of the second INTELSAT VI (F-3) was unsuccessful and the satellite was stranded in an unstable low earth orbit. INTELSAT plans to reboost the satellite from its present low earth orbit to its originally planned slot in the geostationary orbit. The reboost mission is scheduled for the December 1991 to February 1992 time frame.

[3] *See Communications Satellite Corporation*, 5 FCC Rcd 753 (1990) (*INTELSAT VII Order*).

[4] INTELSAT now refers to this satellite as the INTELSAT K.

[5] *Columbia Communications Corporation v. Truly, et al.*, slip op., Civil Action No. 89-2763 (D.D.C. January 30, 1990).

[6] Letter to the Commission from Keith H. Fagan (Attorney for Comsat), dated March 2, 1990.

[7] Letter dated May 17, 1990 from Robert J. Moffitt, Associate Administrator for Procurement Assistance, U.S. Small Business Administration to Charles T. Force, Associate Administrator for Space Operations, National Aeronautics and Space Administration.

[8] Given its current investment share in INTELSAT of 23.9%, Comsat's share of this cost would be approximately $24.3 million.

[9] *See Establishment of Satellite Systems Providing International Communications*, 101 FCC 2d 1046 (1985) (*Separate Systems*); *on recon.*, 61 RR 2d 649 (1986); *further recon.*, 1 FCC Rcd 439 (1986).

[10] Comsat cites a March 23, 1989 telex from six Signatories to INTELSAT indicating the need for additional facilities to accommodate the increasing demand for international television services. The six Signatories represent the United Kingdom, France, Italy, West Germany, Spain and the United States.

[11] "Category A" services include voice-grade services such as Frequency Modulation (FM), Time Division Multiple Access (TDMA) and Intermediate Data Rate (IDR). "Category B" services include IBS and video services.

[12] Both the 1987 and 1988 DG Forecasts assume the successful deployment of three INTELSAT VII satellites in the AOR.

[13] Three INTELSAT VI satellites are scheduled for deployment in the AOR at the 335.5°E, 325.5°E and 332.5°E orbital locations. The projections of current and future capacity in the AOR do not include inclined orbit capacity, which is largely earmarked for cable restoration.

[14] Procurement of a K-band Spacecraft, BG 80-39E, May 25, 1989. INTELSAT believes that the shortfall could be greater in light of indications from certain Signatories that additional demand exists for international TV leases. *Id. See also supra* note 10.

[15] Analyses of the Impact of the 1989 GTM and the DG-89 Forecasts, BG 83-24E, October 24, 1989.

[16] Comsat also supports its application as a necessary step to protect against the consequences of launch or in-orbit failure. Comsat argues that the probability of five consecutive successful deployments is only 44% and that the consequence of a failure is particularly great during the initial stages of a deployment program. It states that early failure not only deprives the system of the use of the lost satellite, but also tends to delay all of the launches that follow. Comsat argues that, should a failure occur in the INTELSAT VI series, the INTELSAT VII program will be unable to provide any relief until late 1992 at the earliest. As noted in footnote 2, *supra*, a launch failure of the second INTELSAT VI satellite has occurred. Our decision with respect to the Satcom K-4 satellite, however, is not based on the need to protect against future launch failures. *Compare INTELSAT VII Order*, *supra* note 3.

[17] Comsat's use of the term "total traffic" in this context refers to the amount of demand that will be accommodated by available transponder capacity, and does not necessarily reflect total forecasted demand, which may not be satisfied by available transponder capacity.

[18] *See supra* para. 14.

[19] IDB notes that on one occasion it was unable to provide data and private-line voice communications via INTELSAT between the U.S. and Poland and Hungary during President Bush's visit to those countries. As a result, IDB used the PAS-1 satellite. IDB states that on other occasions it used the Soviet Intersputnik satellite system when it was unable to obtain suitable capacity from INTELSAT.

[20] *See Separate Systems*, 101 FCC 2d at 1157.

[21] *Id. See also Pacific Telecom Cable, Inc.*, 4 FCC Rcd 4454, 4455 (1989) (*Pacific Telecom Cable*). In the *Pacific Telecom Cable* decision, we stated that although common carrier use of private systems is not prohibited, our policy is that private cable systems shall succeed or fail on their own merits and not through Commission action that would guarantee common carrier use of any system.

[22] Of course, any such efforts will not be considered by the Commission in reaching its decision here.

[23] While not objecting specifically to any Comsat marketing activities, PAS asserts in a July 26, 1990 letter to the Commission that Comsat has committed itself to lease 100% of the transponder capacity on a half-circuit basis in conjunction with commitments made by British Telecom International and Spain's Telefonica. PAS requests that the Commission inquire into what would happen to any lease agreements if the application were denied. PAS' request would appear to be moot, given our disposition of Comsat's application. In any event, we do not believe the issue raised by PAS, which is essentially a pricing issue, is properly decided in a procurement proceeding. Similarly, we deny PAS' additional request that the Commission inquire into the effect on ratepayers if Comsat has "guessed wrong" on its own need for Satcom K-4 capacity. This, too, is essentially a pricing issue and not properly before the Commission in the context of this proceeding. Indeed, PAS cites in support of its arguments a pricing study which it submitted and later withdrew from this proceeding. *See supra* note 1.

[24] *INTELSAT VII Order*, 5 FCC Rcd at 760.

[25] In this regard, we noted that INTELSAT must attempt to forecast accurately if it is to compete with optical fiber cables and other satellite systems that have come into existence recently. *Id.* at 760.

[26] *Id.*

[27] The Signatories representing the United Kingdom, France, Italy, Spain and West Germany were also involved.

[28] WARC-ORB is the World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of Space Services Utilizing It. One objective of WARC-ORB was to make a long-term allotment plan of the geostationary-satellite orbit for certain fixed satellite service frequency bands.

[29] Article III(e) provides that INTELSAT may provide satellites or associated facilities separate from the INTELSAT space segment for: 1) domestic public telecommunications under the jurisdiction of one or more Parties; 2) international public telecommunications services between or among territories under the jurisdiction of two or more Parties; and 3) specialized telecommunications services, other than for military purposes. Article V(e) specifies how facilities acquired pursuant to Article III(e) should be financed.

[30] Having determined that the Satcom K-4 procurement does not properly fall under Article III(e) of the INTELSAT Agreement, there is no need to consider Article V(e). However, we note that even if the Satcom K-4 procurement could be considered under Article III(e), those Signatories using the capacity would not automatically be required to finance the facilities, as provided under Article V(e). Article V(e) of the INTELSAT Agreement provides that such facilities may be financed and owned by INTELSAT as part of the INTELSAT space segment upon the unanimous approval of all the Signatories.

[31] *Statement of Policy Concerning Procedures Applicable to Comsat's Applying for Commission Authorization to Participate in Certain INTELSAT Activities*, 46 FCC 2d 338, 339 (1974) (*"Policy Statement"*).

[32] *See INTELSAT VII Order*, 5 FCC Rcd at 761 (approving Comsat application filed less than 60 days before Board of Governors' decision).

[33] Nevertheless, we continue to encourage Comsat to file its applications as far in advance of the Board of Governors' meetings as feasible.

[34] *See* Comsat's Applications, File Nos. I-T-C-88-025 and I-T-C-88-027, filed November 11 and November 16, 1987, respectively. *See also* IDB's Applications, File Nos. CSG-88-011-ML and CSG-88-029-ML, filed on December 4, 1987 and February 12, 1988, respectively.

[35] *See, e.g.*, INTELSAT VII Order, 5 FCC Rcd at 761.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-130

In the Matter of

Amendment of Section 73.202(b), RM-7160
Table of Allotments,
FM Broadcast Stations.
(Rockledge, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of D.V.R. Broadcasting (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 1750 (1990), requesting the substitution of Channel 274C2 for Channel 274A at Rockledge, Florida, and modification of its construction permit to specify operation on the higher class channel. Petitioner failed to file comments restating an interest in the substitution at Rockledge.

2. As stated in the Appendix to the *Notice*, a showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making a new allotment absent an expression of interest. Therefore, since there has been no such interest here, we will dismiss the petitioner's proposal.

3. Accordingly, IT IS ORDERED, That the petition of D.V.R. Broadcasting, requesting the substitution of Channel 274C2 for Channel 274A, and modification of its construction permit (BPH-861105MK) at Rockledge, Florida, IS HEREBY DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-584

In the Matter of

Amendment of Section 73.202(b), RM-7023
Table of Allotments,
FM Broadcast Stations.
(Kekaha, Hawaii)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 8743 (1989), issued in response to a petition for rule making filed by Algoma Broadcasting Co. (petitioner), permittee of Station KAUI(FM), Channel 277A at Kekaha, Hawaii, proposing the substitution of Channel 277C1 for Channel 277A at Kekaha, Hawaii, and modification of petitioner's construction permit (BPH-881102MC) to specify operation on the higher class channel. Petitioner filed supporting comments. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 277C1 for Channel 277A at Kekaha, since it could provide a wide coverage area FM service. Channel 277C1 can be allotted to Kekaha in compliance with the Commission's minimum distance separation requirements at the construction permit site.[1] Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we are modifying the construction permit for Station KAUI(FM) to specify operation on Channel 277C1 in lieu of Channel 277A at Kekaha, Hawaii.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 3, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Kekaha, Hawaii	277C1

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station KAUI(FM), Kekaha, Hawaii, IS MODIFIED, to specify operation on Channel 277C1 in lieu of Channel 277A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates are North Latitude 21-58-16 and West Longitude 159-42-46. Because this petition was filed prior to October 2, 1989, the petitioner may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 CFR § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-212

In the Matter of

Amendment of Section 73.202(b), RM-7151
Table of Allotments,
FM Broadcast Stations.
(Americus, Georgia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 2671 (1990), issued in response to a petition for rule making filed by Guest-Mattox Broadcasting, Inc. (petitioner), licensee of Station WDEC(FM), Channel 232A, Americus, Georgia, proposing the substitution of Channel 234C3 for Channel 232A at Americus, Georgia, and modification of the license for Station WDEC(FM) to specify operation on the higher powered channel. Petitioner filed comments restating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 234C3 for Channel 232A at Americus, since it would provide an expanded service area FM channel to Americus. Channel 234C3 can be substituted for Channel 232A in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 11.5 kilometers (7.1 miles) southwest,[1] in order to avoid a short-spacing to Station WBYZ(FM), Channel 233C, Baxley, Georgia. In accordance with Section 1.420(g) of the Commission's Rules, we are modifying the license of Station WDEC(FM) to specify operation on Channel 234C3 in lieu of Channel 232A at Americus, Georgia.

3. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 3, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Americus, Georgia	234C3, 249A

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WDEC(FM), Americus, Georgia, IS MODIFIED, to specify operation on Channel 234C3 in lieu of Channel 232A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 234C3 at Americus are North Latitude 31-59-10 and West Longitude 84-18-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-306

In the Matter of

Amendment of Section 73.202(b), RM-7189
Table of Allotments,
FM Broadcast Stations.
(Watertown, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 27, 1990; Released: October 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 3735 (1990), issued in response to a petition for rule making filed by Louis D. Bolton, II (petitioner), permittee of Station WQLC(FM), Channel 271A at Watertown, Florida, proposing the substitution of Channel 271C3 for Channel 271A at Watertown, Florida, and modification of his construction permit to specify operation on the higher class channel. Petitioner filed comments restating his intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 271C3 for Channel 271A at Watertown, since it could provide a wide coverage area FM service. Channel 271C3 can be allotted to Watertown in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.9 kilometers (5.5 miles) northwest[1] of the community in order to avoid a short-spacing to Station WTRS-FM, Channel 272C2, Dunnellon, Florida. In accordance with Section 1.420(g) of the Commission's Rules, we are modifying the construction permit for Station WQLC(FM) to specify operation on Channel 271C3 in lieu of Channel 271A at Watertown, Florida.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 3, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Watertown, Florida	271C3

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station WQLC(FM), Watertown, Florida, IS MODIFIED to specify operation on Channel 271C3 in lieu of Channel 271A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 271C3 at Watertown are North Latitude 30-13-00 and West Longitude 82-41-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-417

In the Matter of

Amendment of Section 73.202(b),	RM-6865
Table of Allotments,	
FM Broadcast Stations.	
(Century, Florida)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 27, 1990; Released: October 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 7035 (1989), issued in response to a petition filed by Ziffle Broadcasting Company, Inc. (petitioner), licensee of Station WKGT(FM), Century, Florida, proposing the substitution of Channel 286C3 for Channel 286A, and modification of its license to specify operation on the higher powered channel. Petitioner filed supporting comments and reply comments. No other comments were received.

2. As indicated in the *Notice*, Channel 286C3 can be allotted to Century, Florida, in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 7.0 kilometers (4.4 miles) north.[1]

3. In view of the above, we believe the public interest would be served by substituting Channel 286C3 for Channel 286A at Century, Florida, since it would provide an expanded coverage FM service to that community. In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station WKGT(FM) to specify operation on Channel 286C3 in lieu of Channel 286A at Century, Florida. The proposed substitution depends on Station WHOD(FM) moving to Channel 233A as authorized in MM Docket 88-124,[2] and Station WAAZ(FM) moving to Channel 284C2 as authorized in MM Docket 86-455. [3] Therefore, issuance of a construction permit or a license to cover that construction permit for Channel 286C3 at Century may be withheld until Stations WHOD, Jackson, Alabama, and Station WAAZ, Crestview, Florida, are licensed accordingly.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 3, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Century, Florida	286C3

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WKGT(FM), Century, Florida, IS MODIFIED, to specify operation on Channel 286C3 in lieu of Channel 286A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The coordinates for Channel 286C3 at Century are North Latitude 31-02-03 and West Longitude 87-16-58. Because the petition for rule making in this proceeding was filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

[2] A *Report and Order* was adopted on December 20, 1988, in MM Docket 88-124, granting the substitution of Channel 233A for Channel 285A at Jackson, Alabama. This action became effective March 16, 1989. *See* 4 FCC Rcd 1185 (1989). In addition, the licensee of Station WHOD(FM) filed a proposal for modification of Station WHOD(FM) to specify operation on Channel 233C3. A *Report and Order* in MM Docket 89-437 granted the proposal. *See* 5 FCC Rcd 2548 (1990). An application (BPH-900605IA) to implement the upgrade on Channel 233C3 at Jackson, Alabama, is presently pending.

[3] A *Report and Order* was adopted on November 23, 1987, in MM Docket 86-455, granting the substitution of Channel 284C2 for Channel 285A at Crestview, Florida. This action became effective January 22, 1988. *See* 2 FCC Rcd 7263 (1987). The licensee of Station WAAZ presently holds a construction permit (BPH-890817ID) for Channel 284C2 at Crestview, Florida, and

has a pending proposal for modification of Station WAAZ(FM) to specify operation on Channel 284C1 in MM Docket 90-91. *See* 5 FCC Rcd 1296 (1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-446

In the Matter of

Amendment of Section 73.202(b), RM-7082
Table of Allotments,
FM Broadcast Stations.
(Key Largo, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 27, 1990; Released: October 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Spanish Broadcasting System of Florida, Inc. (petitioner), permittee of Station WVBH(FM), Channel 280A, Key Largo, Florida, requesting the substitution of Channel 280C2 for Channel 280A at Key Largo and modification of its construction permit (BMPH-871120II) to specify operation on the higher class channel.[1]

2. We believe the public interest would be served by proposing the substitution of Channel 280C2 for Channel 280A at Key Largo, Florida, since this would provide Key Largo with a wide coverage area FM service. Channel 280C2 can be allotted to Key Largo in compliance with the Commission's minimum distance separation requirements, with a site restriction of 20.3 kilometers (12.6 miles) southwest of the community.[2]

3. As requested, we shall also propose to modify petitioner's construction permit to specify operation on Channel 280C2. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 280C2 at Key Largo or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such interested parties.

4. Accordingly, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Key Largo, Florida	280A	280C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 10, 1990,** and reply comments on or before **December 26, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James M. Weitzman
Kaye, Scholer, Fierman, Hays & Handler
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005
(Counsel for Spanish Broadcasting System
of Florida, Inc.)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Since the petition for rule making was filed, the station's call letters were changed from WVBH(FM) to WZMQ(FM).

[2] The coordinates are North Latitude 24-57-20 and West Longitude 80-34-50. Because this petition was filed prior to October 2, 1989, petitioner may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE
Released: October 9, 1990

CLARIFICATION OF INITIAL APPLICATION REQUIREMENTS FOR THE 800 MHZ AIR - GROUND RADIOTELEPHONE SERVICE

General Docket No. 88-96

This Public Notice provides additional guidance for persons who are preparing initial applications for authorization to operate a nationwide system in the new 800 MHz Air-Ground Radiotelephone Service. Recently, the Commission received a motion for declaratory ruling and several telephone calls requesting information concerning the initial application filing requirements in this service.

Fee amount. Statutory requirements governing FCC application filing fees dictate that the Commission collect fees for 800 MHz Air-Ground Radiotelephone service applications in conformance with the fee schedule for applications in the Public Land Mobile Service. Specifically, the filing fee for 800 MHz Air-Ground Radiotelephone service applications is $230 *for each ground station transmitter*. The fee will be calculated based upon the number of transmitters requested in the attached FCC Form 401 Schedule B(s) or exhibits attached thereto. A minimum filing fee of $230 is required with each application. These applications should be submitted with the appropriate filing fee and a completed FCC Form 155 on or before October 15, 1990, to: Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, Pennsylvania 15251-5130. Applications may also be hand delivered to Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153/2713, Pittsburgh, Pennsylvania, Attention: Wholesale Lockbox Shift Supervisor. Applications must be accompanied by the appropriate filing fee for Code CMD public land mobile service applications in accordance with the procedures set forth in Section 1.1101 of the rules, 47 CFR §1.1101 *et seq*.

Number of ground stations. Initial applications must request authority to construct and operate a nationwide air-ground system comprising at least 50 ground stations. The city and state of each location planned must be specified in the Technical exhibit to the application. The Financial Qualifications exhibit and Service Plan must be based upon the nationwide system. However, the Commission recognizes that the precise location and site availability for all 50 sites may not be available before the filing window closes on October 15, 1990. Accordingly, applicants need not submit an FCC Form 401 Schedule B for ground stations where the aforementioned information is not known at the time of filing. An applicant may file an FCC Form 401 together with a list of the fifty cities it proposes but need not provide the engineering for these locations. A $230 filing fee is required with such an application. However, upon grant of the application, authority to construct and operate will be issued only for those ground stations for which a Form 401 Schedule B was submitted. When authority is requested to actually build facilities where a Schedule B has not been filed and approved, an FCC Form 401 together with a completed Schedule B and a filing fee of $230 per ground station transmitter will be required. Multiples should be calculated on FCC Form 155.

Items on FCC Form 401. For applications in the 800 MHz Air-Ground Radiotelephone Service, FCC Form 401 must be completed as follows:

On Schedule A, the correct answer to item 6 is B, and the correct answer to item 7 is E. Items 8, 9, 18, 19, 20 and 21 do not apply, and therefore they need not be completed.

Where Schedule B(s) are included, items 30, 33d, 33h, 33i, 33j(5)-(7), 37 and 38 do not apply, and therefore need not be completed. Instead of completing items 33j(1) and 33j(2), applicants may attach an exhibit to Schedule B that clearly indicates how many transmitters are planned for that location (include the transmitter on the control channel). Transmitters on the control channel are Class SI. Transmitters on the communications channels are Class BS. Although items 33j(3) and 33j(4) are applicable to the 800 MHz Air-Ground service, applicants are required to submit information on the emission types to be used and the peak envelope power of the transmitters as a part of the technical exhibit to the application. Therefore, these two items need not be completed on each Schedule B.

Finally, we wish to remind all applicants that although reconsideration of several technical requirements has been requested, the requirements established in the *Report and Order* in this proceeding remain in effect.

For further information contact Jay Jackson, telephone (202) 653-5560 and the Fee Hotline, (202) 632-FEES.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TELESPHERE
NETWORK, INC.
Complainant,

v.

GTE NORTH INCORPORATED, GTE SOUTHWEST INCORPORATED,
Defendants.

File No. E-90-179
File No. E-90-180

ORDER

Adopted: October 4, 1990; Released: October 17, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On May 11, 1990, Telesphere Network, Inc. (hereinafter "Telesphere") filed with the Commission the above-captioned formal complaints against GTE North Incorporated and GTE Southwest Incorporated (hereinafter the "Defendants") seeking recovery of damages for the Defendants' alleged overearnings on interstate access services for the period January 1, 1987 through December 31, 1988. On September 13, 1990, however, Telesphere filed motions for leave to withdraw the complaints with prejudice stating that the parties had entered into a formal resolution of Telesphere's claims and that, as a consequence, there was no longer any necessity for these proceedings.

2. On the basis of the statements contained in the Motions, we conclude that the public interest would be served by granting Telesphere's motions.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that Telesphere's Motions for Leave to Withdraw Complaints ARE GRANTED and that the above-captioned proceedings ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

FIRST PHONE
OF NEW ENGLAND, INC.,
Complainant,

v. File No. E-90-314

ROCHESTER
TELEPHONE
CORPORATION,
Defendant.

ORDER

Adopted: October 4, 1990; Released: October 17, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On May 18, 1990, First Phone of New England, Inc. (hereinafter "First Phone") filed with the Commission the above-captioned formal complaint against the Rochester Telephone Corporation (hereinafter the "Defendant") seeking recovery of damages for the Defendant's alleged overearnings on interstate access services for the period January 1, 1987 through December 31, 1988. On July 5, 1990, however, First Phone filed a motion for leave to withdraw the complaint, stating that it does not wish to pursue its claim against the Defendant and is seeking leave to withdraw its complaint.

2. On the basis of the statements contained in the Motion, we conclude that the public interest would be served by granting First Phone's motion.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that First Phone's Motion for Leave to Withdraw Complaint IS GRANTED and that the above-captioned proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE
& TELEGRAPH COMPANY
Complainant,

v. File No. E-90-84

TELEPHONE UTILITIES
EXCHANGE CARRIER
ASSOCIATION,
et. al,
Defendant.

ORDER

Adopted: October 4, 1990; Released: October 17, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On November 22, 1989, American Telephone and Telegraph Company (hereinafter "AT&T") filed with the Commission the above-captioned formal complaint against the Telephone Utilities Exchange Carrier Association (hereinafter the "Defendant") seeking recovery of damages for Defendant's alleged overearnings on interstate access services for the period January 1, 1987 through December 31, 1988. In accordance with Commission rules governing formal complaint proceedings, the Defendant filed an answer to the complaint.

2. The parties to the above-captioned complaint have conducted discussions aimed at settling the complaint. As a result of these negotiations, a mutually agreeable settlement of all pending controversies between the parties was reached. On September 25, 1990, the parties filed a joint motion seeking dismissal of the complaint with prejudice. We are satisfied that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the Joint Motion to Dismiss the above-captioned complaint IS GRANTED and that the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-313

In the Matter of

Policies and Rules Concerning Operator Service Providers — RM-6767

ORDER

Adopted: October 5, 1990; Released: October 5, 1990

By the Chief, Common Carrier Bureau:

1. In the above-captioned proceeding, the Commission, *inter alia,* ordered that reply comments be filed by October 9, 1990. *Policies and Rules Concerning Operator Service Providers,* Notice of Proposed Rule Making, 5 FCC Rcd 4630, 4636 (1990) ("NPRM"). During the pendency of this proceeding, Congress has been considering legislation that addresses many of the same issues, as well as additional related issues. On October 1 and October 3, respectively, the Senate and the House of Representatives passed the Telephone Operator Consumer Services Improvement Act of 1990, S. 1660, 101st Cong., 2d Sess. (1990) ("Operator Services Act").

2. Although the Operator Services Act has not as of this point been signed into law by the President, we think it would nevertheless be helpful if the provisions of the Act were considered by interested parties in any reply comments they may file in the rule making proceeding. In order to provide ample time for such consideration, on our own motion we extend the period for filing reply comments an additional two weeks, to October 23, 1990. We also ask interested parties to address, as part of their replies, three areas of concern: (1) any new issues raised by the Operator Services Act; (2) the relationship between the Act and issues already raised in the NPRM; and (3) the need, if any, for a Further Notice of Proposed Rule Making.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the Commission's Rules, 47 C.F.R. 0.291, that the filing period for reply comments on matters discussed in the above-referenced Notice of Proposed Rule Making and on matters discussed in this Order IS EXTENDED to October 23, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Southwestern Bell Telephone Company — Transmittal No. 2002

Revisions to Tariff F.C.C. No. 68

ORDER

Adopted: September 25, 1990 Released: September 25, 1990

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. On June 28, 1990, Southwestern Bell Telephone Company (SWB) filed Transmittal 2002, seeking to introduce what it calls "rollover" service. The Description and Justification (D&J) for the new service proposes a different rate structure and different, generally lower, rate levels for non-recurring charges (NRCs) applicable to certain moves of access facilities by a customer within its own premise. The service would be available for various elements of SWB's switched, special, and MegaLink access services. More specifically, SWB defines a rollover as a customer-initiated move of the switched access), one existing service (*i.e.,* special access), or one MegaLink Custom Electrical or Optical Service, to any other of these services or service elements whose component parts reside within the same customer premise and the same wire center.[1] Presently, SWB treats such moves as separate transactions, consisting of disconnection of an existing service and then connection of a new one, each with a specified NRC and other charges. Under the proposed tariff, rollovers would involve only a single NRC rollover charge, plus a small administrative access order charge, for moves from voice grade to DS1 facilities and from DS1 to DS3 facilities.[2]

2. The D&J offers several examples and diagrams of rollover situations. For example, a rollover charge would apply if a customer adds several voice grade lines to an existing DS1 line on the same premise which had the spare capacity for them, leaving the previous voice grade facilities "vacant." As another example, it would apply if a customer reroutes a DS1 line from one DS3 facility to another DS3 facility on the same premise, leaving the previous DS1 line "vacant". [3] Compared with the combined rates of the present dual treatment for customer premises moves, rollover rates are generally lower. SWB states that the customer's resulting net NRC savings would vary depending on the particular configuration, ranging from approximately 25 to 75 percent.[4]

3. Finally, the D&J presents summary demand projections and unit cost data for each study area and then describes the development of rollover rates. These rates generally consist of non-recurring charges on a "first and additional" basis. SWB includes no finacial data to support these NRCs. It merely provides material showing the effect of the NRCs on switched and special access rates and revenues. That material indicates that rollovers in the first year of implementation would stimulate recurring demand while decreasing NRC revenue, and that the revenue requirement impact would be *de mimimis*.[5]

II. PLEADING

A. MFS Petition

4. MFS filed a petition against Transmittal 2002. MFS charges that rollovers are simply discounts, financed by cross-subsidies from ordinary customers, designed to induce large customers to migrate from SWB's existing high capacity services to even higher ones.[6] More specifically, MFS characterizes the instant rollover proposal as an adjunct to the fiber ring which SWB is building in Houston, as described in SWB's Transmittal 1994,[7] as well as other such rings SWB plans in other cities. MFS contends that SWB is attempting to crowd out the fiber ring which MFS itself has just built in Houston, creating unnecessary duplication and stranded plant. MFS also states that if the instant rollover filing is not rejected on its merits alone, the Commission should at least withhold further action on rollovers until the issues raised in Transmittal 1994 are resolved.[8]

5. MFS further argues that SWB's implicit claims that the net decrease in NRC revenues will be offset by eventual gains in recurring revenues ignores a number of important items. First, MFS says, SWB's admitted reason for wanting a rollover provision is to encourage upward migration from current, conventional switched and special access services to fiber optic rings. In this context, MFS cites language from the D&J stating that, based on SWB's "marketing, the majority of the demand for rollover is expected to be . . . for the Ring Architecture service."[9] In this posture, MFS continues, SWB has completely ignored the costs of stranded capacity which such migration would leave in its wake.[10] MFS further notes that this danger of abandoned facilities is demonstrated graphically by SWB's use of the label "vacated" in its example diagrams for circuits displaced by a rollover move.[11]

6. MFS makes similar arguments regarding SWB's failure to address issues and maintain consistency in several other areas. Thus, MFS claims that customer migration, facilitated by rollovers, to higher capacity services could result in unecomonic server bypass.[12] Similarly, MFS contends that migration from switched to special access service could reduce SWB's total switched access minutes of use, resulting in separations cost shifts to the intrastate jurisdication.[13] Finally, in this vein, MFS asserts that SWB has failed to account for the costs from forgiveness of premature termination charges under long-term contracts.[14]

7. MFS also challenges SWB's demand projections for DS3, DS1, DS0 circuits and alleges various inconsistencies on such projections in past proceedings.[15] MFS also asserts that SWB has barely managed to advance beyond the planning stage in what is its first fiber ring, the one in Houston proposed to be offered to American Telephone and Telegraph Company under Transmittal 1994. Even that project, says MFS, is now so clouded by regulatory litigation that it cannot be relied upon to support demand projections.[16] In addition, MFS describes SWB's cost support as flawed and inadequate under the requirements of Section 61.38 of the Commission's Rules, 47 C.F.R. §

61.38.[17] Furthermore, MFS argues that only one customer, AT&T, could really use rollover service, and that the proposed rollover tariff is therefore discriminatory.[18]

B. SWB Reply

8. SWB replies that its rollover proposal is not simply an adjunct to the fiber ring offered in Transmittal 1994. On the contrary, it argues, only one of the many customers who have recently requested rollover service has any connection with fiber rings, and this one customer made many other non-ring related requests as well. Rollovers, SWB maintains, are useful in recorganizing and improving private telecommunications networks in a variety of ways not directly related to fiber optic rings. For example, rollovers facilitate network consolidation after a merger and allow the division of traffic into trypes, such as audio versus data usage, for traffic analysis purposes. According to SWB, these and similar practices, called "grooming," are common in the telephone industry.[19]

9. SWB also contends that the rollover proposal is part of its ongoing response to the Commission's mandate in the *NRC Order* [20] to move NRCs closer to cost, and it cites several other filings of this kind which it has made in the last two years.[21] Similarly, SWB disputes the claim that the generally lower rates which rollovers would entail compared to the present, dual transaction rate methodology, is not the result of some discriminatory subsidy from captive ratepayers. Rather, SWB exaplains, these lower rates simply reflect the lower costs of moves within a single customer premise. In addition, SWB states, the new rollover rates will be generlly available to any customer that wants them and are therefore non-discriminatory. [22]

10. SWB also responds to MFS's argument that SWB has not accounted for the revenue loss and potential cross-subsidy arising from forgiveness of premature contract termination. SWB states that a customer who has subscribed to SWB's multi-year special access Optional Payment Plan (OPP) may connect or disconnect particular parts of its speccial access service however it wants, as long as it continues to make the Minimum Monthly Payment.[23] According to SWB, a termination charge would still be imposed, however, if the customer ceased making these payments. Similarly, a customer of SWB's MegaLink service would be subject to termination charges if it chose to disconnect the service before the agreed date.[24]

11. SWB also argues that MFS misunderstands the fate of facilities which are "vacated" by a rollover change: they are not stranded, but simply made available for other purposes.[25] SWB responds to MFS's attack on its cost support with a simple reiteration that is has already provided sufficient material in its D&J.[26] Finally, SWB rejects MFS's allegation that rollovers will encourage switched service bypass because the moved circuits would be relocated on a higher capacity special access circuit and therefore would result in shared use, not bypass.[27] SWB does not respond to MFS's contentions that SWB is overly optimistic in its demand projections.

III. DISCUSSION

12. Transmittal 2002 is fatally flawed because SWB has chosen to refrain from furnishing any cost support necessary for a determination of whether its rates are reasonable. Without this information before us, we cannot determine whether the rates are in accord with statutory requirements. SWB's failure to furnish this information is a patent violation of the Commission's Rules, rendering the filing unlawful.

13. Although SWB describes the general methodology it used to develop rollover rates,[28] it provides no data in support of this narrative. For example, the filing identifies but fails to support what it believes to be the NRC requirements, as follows: (1) the work groups and functions associated with providing the service; (2) the labor times for each work function; (3) the pay grades of the personnel involved; and (4) the multiplication product of the labor times and the labor rates. There are no workpapers that show the actual calculations used in determining each non-recurring charge included in the proposed rates. SWB fails to demonstrate whether these are in fact all the steps required by the *NRC Order*, whether they accurately reflect the requirements of that Order, and whether they were actually performed by SWB as contemplated in that Order. This constitutes a violation of Section 61.38 of the Commission's Rules, 47 C.F.R. § 61.38.

IV. CONCLUSION; ORDERING CLAUSES

14. We conclude that the lack of adequate cost support renders the SWB Transmittal unlawful. For this reason, we reject Transmittal No. 2002.

15. Accordingly, IT IS ORDERED that Southwestern Bell Telephone Company Tariff F.C.C. No. 68, Transmittal No. 2002 IS REJECTED.

16. IT IS, FURTHER ORDERED that Southwestern Bell Telephone Company SHALL ISSUE revisions to the tariff no later than five business days from the release of this Order removing the rejected material from its tariff. These revisions shall be scheduled to become effective on not less than one day's notice.

17. IT IS FURTHER ORDERED that Special Permission No. 90-1043 IS ASSIGNED and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, ARE WAIVED for the purposes of issuing the above revision.

18. IT IS FURTHER ORDERED that the petition to reject or to suspend and investigate Transmittal No. 2002 IS GRANTED to the extent discussed herein, and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] D&J at 1-2. *See also* SWB Reply at 1 n.3.

[2] D&J at 4.

[3] *Id.* at 6-11.

[4] *Id.*

[5] D&J, Appendices A & B. A "first and additional basis" rate structure consists of a certain dollar charge for the first unit drawn from a fungible set of items and a uniform additional charge, usually less than the first, for each additional unit drawn from the set. This, applies to each service Order. If more than one change is requested on a service Order, the additional changes are priced lower to reflect economics of scale.

[6] MFS Petition at 1-2.

[7] *See* Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 68, Transmittal No. 1994, filed June 11, 1990. Several petitioners, including MFS, opposed this fiber ring proposal. Transmittal 1994 is currently scheduled to become effective on October 10, 1990, and is still under review by the Common Carrier Bureau.

[8] MFS Petition at 4 n.7.

[9] *Id.* at 5, *citing* D&J, Appendix A at 1.

[10] *Id.* at 5-7.

[11] *Id.* at 5-6.

[12] *Id.* at 6-7.

[13] *Id.* at 7-8.

[14] *Id.* at 8-9.

[15] *Id.* at 9.

[16] *Id.* at 10.

[17] *Id.* at 10.

[18] *Id.* at 11-12.

[19] SWB Reply at 2-4.

[20] Investigation of Interstate Access Tariff Non-Recurring Charges, 2 FCC Rcd 3498 (1987), *recon. denied,* 3 FCC Rcd 2856 (1988) (*NRC Order*).

[21] *Id.* at 4-5.

[22] *Id.* at 5-7.

[23] Although SWB's reply does not specifically say so, the allowed range of changes has been previously agreed upon in the OPP contract.

[24] SWB Reply at 7-8.

[25] *Id.* at 9.

[26] *Id.* at 8.

[27] *Id.* at 10.

[28] *See* D&J, Appendix B.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 80-286

In the Matter of

Amendment of Part 36 of the
Commission's Rules and
Establishment of a Joint Board

NOTICE OF PROPOSED RULE MAKING

Adopted: September 4, 1990; Released: October 10, 1990

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rule Making, we propose to revise the definition of "study area" set forth in the Glossary of Part 36 of the Rules.[1] The current definition freezes study area boundaries as they were on November 15, 1984. The purpose in freezing study area boundaries was to prevent companies from subdividing study areas to isolate areas with high cost in order to increase the high cost support provided under Part 36. The effect of the freeze, however, has been to also prevent changes in study areas for other reasons, such as the sale of local exchanges, unless a waiver of the study area definition is obtained. This has led to numerous waiver requests which, in turn, raise concerns regarding the continued validity of our 1984 rule.

2. On November 3, 1989, Telephone and Data Systems, Inc. (TDS) filed a petition requesting a blanket waiver relating to the definition of study area in Part 36. TDS requests this blanket waiver to allow study area consolidations in the future where a change in study area boundaries would have no significant effect on the interests that the current definition seeks to protect. TDS also requests a blanket waiver of Sections 36.154(e)(1) and (2)[2] and Section 36.125(f) [3] of the Rules relating to the computation of a transitional Subscriber Plant Factor (SPF) and the allocation factor for local switching equipment to the extent those allocators are affected by the merger or purchase or sale of exchanges.

3. Although we believe there may be merit to changing the study area definition under Part 36, we do not believe that a blanket waiver is the most desirable approach to making a change. Consequently, we will treat TDS's petition for a blanket waiver as a petition for Rule Making, and we hereby seek comments concerning the definition of study area and under what circumstances we should allow changes in study area boundaries, plus appropriate revisions to SPFs and the local switching allocation factors. Moreover, we refer these issues to the CC Docket No. 80-286 Joint Board and request that it review the comments and prepare a recommendation for further action regarding these issues.

II. BACKGROUND

4. A study area is a geographical region generally composed of a telephone company's exchanges within a single state. There are instances, however, where a telephone holding company may have several wholly owned telephone subsidiaries within a single state and each one or a combination of subsidiaries may constitute separate study areas. There are also cases where a single study area is composed of a telephone company's exchanges located in bordering states which share a community of interest.

5. The current definition of study area, which freezes study areas as of November 15, 1984, was adopted by the Commission[4] based on a recommendation of the Joint Board. Previously, a study area was defined as "a telephone holding company's operations within a single state."[5] This definition, however, would have required a single statewide cost study for companies owned by the same holding company even though the companies did not have consolidated operations and performed separate cost studies. To facilitate administration of the high cost fund, eliminate record keeping burdens, and remove the disincentive for purchase of high cost companies or expansion of service into high cost areas, the Joint Board recommended the current definition of study area.

6. The current rules do not work well for situations in which a company is combining existing study areas after merging affiliate operations or buying or selling exchanges because these changes require a waiver of the study area definition. We tentatively conclude that a rule change is required and that the new rule should allow changes in study area boundaries which result from mergers of a company's operations or the purchase or sales of exchanges between unaffiliated entities.

III. SUMMARY OF PETITION

7. TDS states in its petition that it has found it efficient to merge one or more of its local exchange carriers (LECs) which operate in close proximity or in contiguous service areas. According to TDS, the LECs typically must obtain prior approval for mergers from the state regulatory bodies in the states where they operate but, in most cases, not from this Commission. With the frequency with which acquisitions and consolidations occur in the telecommunications industry, TDS believes that circumstances continually arise where it and other carriers desire to merge operations in order to improve operating and administrative efficiencies and reduce costs without jeopardizing the public interest in high quality, locally responsive service.

8. TDS states that the blanket waiver would remove the regulatory burden on carriers in obtaining, and on the Commission in processing, individual waivers for study area consolidations that do not jeopardize Commission policy because the effects on separations and high cost support are immaterial. TDS states that the purpose of freezing study area boundaries was to prevent carriers from segregating high cost exchanges within their existing service territory as separate study areas for the sole purpose of receiving more high cost support. It reasons that a consolidation of study areas, by definition, does not cause a separate study area to be created for artificially increased high cost support. Consequently, the blanket waiver that TDS requests would be confined to consolidations of study areas where the ownership of the companies would remain the same before and after the

consolidation and where there would be no material increase in the total USF or the company's share of the USF.

9. In requesting a waiver of Section 36.154(e), TDS indicates that if the newly merged company computes its investments and expenses on a cost basis, rather than on an average schedule basis,[6] it may be necessary to calculate a base year SPF for each newly consolidated study area as if that study area had been in existence in 1981. TDS states that this base year SPF would be used to develop transitional SPFs for each consolidated study area that would equal the SPFs the study area would have had if it had been in existence since 1981. TDS suggests that the Commission could limit the authority granted in the blanket waiver to consolidations that have no material effect on cost allocations.

10. TDS also requests a blanket waiver of Section 36.125(f) of the Commission's Rules, which contains weighting factors that are used to calculate the separations factors for Category 3 local switching equipment. TDS indicates that this blanket waiver should provide that these weighting factors may be adjusted, as necessary, if consolidation results in a study area where the number of access lines passes the 10,000, 20,000, or 50,000 line thresholds specified in Section 36.125(f). TDS concludes that as long as a carrier realizes that the merged study areas will employ weighting factors determined by its post-merger size, the Commission's intent of applying factors on the basis of the number of carrier access lines will remain intact.

IV. SUMMARY OF COMMENTS AND REPLY COMMENTS

11. On November 22, 1989, we issued a public notice requesting comments on the petition for the blanket waiver filed by TDS. Comments were filed by the Missouri Public Service Commission and the Arkansas Public Service Commission (Missouri and Arkansas) filing jointly[7] and reply comments were filed by TDS, the National Association of Regulatory Utility Commissioners (NARUC), and the United States Telephone Association (USTA).

12. USTA states that the public interest would be served if the Commission clarified the circumstances under which study areas of one carrier in a state could be combined without obtaining Commission approval. It believes that a condition of general revenue neutrality should be the Commission's policy for study area consolidations. USTA claims that this neutrality standard would permit the Commission to avoid unnecessary burdens in dealing with carrier consolidations of study areas and would not affect state jurisdiction regarding mergers. The benefits of allowing consolidations of study areas, according to USTA, are a reduction in the number of cost studies, reports, audits, true-ups, and administrative burdens on the state commissions and NECA. USTA believes that the handling of the SPF transition and the weighting of Category 3 local switching equipment should also be undertaken in such a way as to maintain neutrality in impact on pools and jurisdictional separations.

13. Missouri and Arkansas oppose the blanket waiver request of TDS. They believe that the preferred course would be to maintain the existing rule, but allow waivers on an individual case basis. They state that one of the dangers of a blanket waiver is that the resulting study areas would be inconsistent with state ratemaking. They also state that if we allow a blanket waiver, holding companies would have incentives to mix and match study areas in order to maximize high cost support. They also doubt that TDS would realize administrative savings through mergers since TDS would continue to maintain traffic and investment information by individual office, regardless of the study area definition. Missouri and Arkansas argue that TDS could affect the administration of the USF if allowed to merge under a blanket waiver by recalculating its consolidated study area loop costs after NECA has calculated the amount of the direct charge to the interexchange carriers.

14. For the aforementioned reasons, Missouri and Arkansas request that we retain the current rules. Alternatively, they recommend that the Commission refer the issue to the CC Docket No. 80-286 Joint Board. They state that a blanket waiver is the same as a change in rules and that any change in Part 36 of the Commission's Rules must be referred to the Joint Board. Moreover, they claim that since it was the CC Docket No. 80-286 Joint Board that recommended the existing definition, it is appropriate that a revision in the definition should be referred to that Joint Board. If the Commission does not want to consider either of these two alternatives, Missouri and Arkansas suggest that the Commission defer these boundary issues to the respective state commissions.

15. In reply comments, NARUC opposes the blanket waiver and essentially supports the arguments of Missouri and Arkansas. NARUC, however, states that the proper procedure to develop the standards and conditions such as are defined by TDS in support of a blanket waiver is through the Rule Making process. NARUC believes that the states must have a role in determining what constitutes an immaterial effect. State approval should be required for the consolidation of study areas as well as for mergers.[8] NARUC thus requests that if the Commission finds any merit to TDS's petition, it should open a Rule Making proceeding and refer the issue to a Federal-State Joint Board.

16. In its reply, TDS reaffirms its initial position, and further indicates that it would be acceptable to limit the blanket waiver to consolidations where the same study area would be used for state purposes.[9] In addition, it proposes that appropriate state agency approval be required for a merger before the blanket waiver could be invoked. In this way, the states could look at the intrastate rate implications, the need for new ratemaking, the impact on state or federal high cost assistance and other separations results.

V. DISCUSSION

17. We tentatively conclude that the definition of study area should be changed, and that our rules should allow carriers to change or establish new study areas within a single state without waivers or approval from this Commission when they: (a) combine existing study areas after merger of affiliate operations; or (b) purchase exchanges from or sell exchanges to unaffiliated parties. Our primary objective in adopting the frozen study area definition was to prohibit companies from setting up high cost exchanges within their existing service territories as separate study areas to maximize high cost support. We continue to believe this objective has merit. However, the frozen study area definition does not work well in situ-

ations involving mergers of study areas or arms-length sales of exchanges. For example, if carrier A sells an exchange to carrier B, and we insist on maintaining the frozen study area boundaries, carrier A's study area would include costs for an exchange it no longer owns and carrier B's study area would not include costs for an exchange it does own. We do not believe that such anomalous and burdensome results are necessary to achieve our stated objective.

18. However, the states have expressed concern that, if carriers are allowed to change study area boundaries through mergers and sales transactions, they will manipulate study areas so as to shift revenue requirements to the state jurisdictions. In the past year, the Common Carrier Bureau has reviewed and allowed changes in more than 10 study areas resulting from affiliate mergers and sales to unaffiliated parties, and in no case has this generated a significant shift in jurisdictional revenue requirements. We understand the states' ongoing concern, however, and seek comment on this issue.

19. We tentatively conclude that the new procedure should apply only if the parties involved in the merger or sales transaction notify the state agencies that they plan to change their study areas if the transaction is approved and only if the state agencies do not oppose the changes. We propose to require each carrier that seeks to change study areas under the new procedure to certify that it has notified the affected states of its plans and, where applicable, obtained state approval of those plans. This certification would be provided when the carrier notifies this Commission of its intent to proceed under the new procedure. In this way, the state agencies could review the intrastate rate matters if they choose to do so. The Bureau, pursuant to delegated authority, would expeditiously review changes in study area boundaries proposed under the new procedure. If the Bureau does not stay, reject, modify, or condition such a change within 60 days from receiving notice of the proposal, the change would take effect. This period would also allow the states and interested parties to comment, if they choose to do so. We invite comment on this approach.

20. We are also proposing requirements regarding the establishment of study areas following the sale or purchase of an exchange. It is our understanding that most states review and approve sales transactions between unaffiliated entities. If a state, however, does not have any review or approval process relating to sales transactions, we would require the carriers to notify that state, before applying to this Commission, of their intention to revise study areas. If a carrier sells an exchange, we propose that it delete the exchange from the existing study area and form one new study area from the remaining exchanges. If a carrier buys an exchange, we propose that it combine the new exchange with an existing study area in that state and form one new study area or, if it has no study area in the state, that it form one new study area. We request that parties comment on whether these proposed requirements would keep carriers from manipulating study areas in order to increase their high cost support.

21. We tentatively conclude that, if a cost-based carrier changes its study area boundaries, it should have the option of revising its SPF and COE Local Switching Equipment - Category 3 allocation factor. However, in the case of a new study area created by the purchase of an exchange where the purchasing carrier has no existing study areas in a state, we propose that the purchasing carrier use the transitional SPF and COE Category 3 factor of the selling carrier for the remainder of the transition period.

22. We propose that each carrier that seeks to change a study area pursuant to the new procedure also provide the Commission with information regarding the locations of the existing and proposed study areas, the transaction giving rise to the proposed change, any conditions imposed by a state in connection with that transaction, the number of access lines and cost per access lines for the existing and proposed study areas, and the amount of high cost support for those study areas. If the carrier seeks to revise its SPF and allocation factor for Category 3 local switching equipment, the carrier would also be required to file information that would allow us to calculate the impact of those changes on interstate ratepayers.[10]

23. We refer this issue to the CC Docket No. 80-286 Joint Board and request that it prepare a recommendation regarding these issues. We request that parties file comments on our tentative conclusions. Parties may propose alternative approaches for revising the definition of study area. Such parties should include specific proposed rule amendments to implement those approaches.

VI. OTHER MATTERS

A. Regulatory Flexibility Act

24. We certify that the Regulatory Flexibility Act[11] is not applicable to the rule changes we are proposing in this proceeding. In accordance with the provisions of Section 605 of the Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Notice in the Federal Register. As part of our analysis of the proposal described in this Notice, however, we will consider the impact on small telephone companies, *i.e.*, those serving 50,000 or fewer lines.[12] The action proposed herein would have a beneficial economic impact on the majority of the small telephone companies because it would reduce the amount of waiver pleadings necessary for a company to file, and thus, promote universal service by establishing local exchange service rates in high cost areas that are lower than they otherwise would be.

B. Paperwork Reduction Act

25. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed in the Act.

C. *Ex Parte Contacts*

26. For purposes of this non-restricted notice and comments Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period.[13] The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when this Commission: (1) releases a text of a decision or order in

the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first.[14] During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by this Commission or our staff for the clarification or addition of evidence or the resolution of issues in the proceedings.[15]

27. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which: (1) if written, is not served on the parties to proceeding; or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present.[16] Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to this Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates.[17]

28. For Joint Board actions, special *ex parte* rules apply.[18] For those actions, all written materials that are not filed in accordance with a pleading cycle established by the Joint Board shall be accompanied by a Petition for Leave to File showing cause why the materials should be considered by the Joint Board. The Joint Board will not consider any filing made outside the authorized pleading cycle and received by this Commission less than fifteen days[19] in advance of a Joint Board meeting at which it will consider the subject matter of that filing. Written *ex parte* presentations, as defined by our rules, need not be accompanied by a Petition for Leave to File and may be received at the discretion of the Joint Board member or staff personnel involved. No written *ex parte* presentations, however, shall be made during the fifteen day period immediately preceding a Joint Board meeting except in response to an inquiry initiated by a member of the Joint Board or its staff.

VII. ORDERING CLAUSE

29. Interested parties may file comments in response to this Notice no later than **November 30, 1990** and reply comments no later than **December 14, 1990.** In accordance with Sections 1.415 and 1.419 of the Commission's Rules,[20] parties must serve an original and five copies on the Secretary of this Commission. Parties must also serve copies on the Joint Board members and staff listed in Appendix B and on the Commission's contractor for public records duplication, International Transcription Services, Inc., 2100 M Street N.W. Suite 140, Washington, D.C. 20037, (202) 857-3800. Copies of the comments will be available for inspection in the Commission's Docket Reference Room, 1919 M Street N.W. Room 239, Washington, D.C. 20554.

30. Accordingly, pursuant to Sections 4(i), 201-205, 218, 221(c), 403 and 410 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 201-205, 218, 221(c), 403, and 410, The Joint Board in CC Docket No. 80-286 shall review the comments, proposals, and data filed in response to this Notice and prepare a recommendation to this Commission on the issues raised herein.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Part 36 of Title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

1. The authority citation for Part 36 continues to read:

Authority: 47 U. S.C. Secs. 151, 154 (i) and (j), 205, 221 (c), 403 and 410.

2. The definition of "study area" contained in Appendix-Glossary is proposed to be revised as follows:

Appendix-Glossary

* * * * *

Study Area: A geographical region generally composed of a telephone company's exchanges within a single state. There are instances, however, where a telephone holding company may have several telephone company subsidiaries within a single state and each one or a combination of subsidiaries are separate study areas. There are also cases where a single study area is composed of a telephone company's exchanges located in bordering states which share a community of interest.

* * * * *

3. Section 36.2 is proposed to be revised by changing its heading and adding paragraphs (f) to (j) as follows:

Sec. 36.2 Fundamental principles and procedures.

* * * * *

(f) Study area boundaries shall be frozen as they were on November 15, 1984 except for subsequent:

(1) combining of study areas by a carrier after merger of affiliate operations within a single state including those study areas with exchanges in bordering states sharing a community of interest, and

(2) sales transactions between unaffiliated entities involving the sale and purchase of exchanges within a single state including exchanges in bordering states sharing a community of interest.

(g) If a carrier is selling exchanges located within a single study area, it must delete these exchanges from the existing study area, and form one study area from the

remaining exchanges. If a carrier is buying exchanges located within a single study area and a single state, it must combine the purchased exchanges with an existing study area of that carrier in that state to form one study area or if the carrier has no study areas in the state, the carrier must form only one new study area. For selling and buying carriers having existing study areas which cross state boundaries as a community of interest, the acquired or existing exchanges located in different states may not be separated because of the sale or purchase. The revised study area must encompass all the exchanges in an existing study area if a carrier has one in either state.

(h) A carrier that proposes to change a study area pursuant to Section 36.2 (f) shall file the following information with the Commission:

(1) A description of the transaction giving rise to the proposed change, including the names of the carriers, companies and holding companies, cooperatives, and exchanges that are being merged, sold, or bought;

(2) The state(s) in which the existing and proposed study areas are located;

(3) Certification that the carrier has notified the agency or agencies having jurisdiction over intrastate telephone operations in the states listed in Section 36.2 (h)(2) that a change in study area will be proposed and that the carrier has obtained all state approval required to make that change;

(4) Any conditions imposed by the state agency or agencies in granting approval;

(5) The number of access lines and cost per access line for the existing and proposed study areas; and

(6) The amount of high cost support for each of the existing study areas and the estimated amount of high cost support for the proposed study area.

(i) A proposed study area change filed pursuant to Section 36.2 (f) shall be deemed to be effective if not stayed, rejected, modified, or conditioned by the Commission within 60 days of the filing date of the notification.

(j) In the case of a new study area, the purchasing carrier shall use the transitional Subscriber Plant Factors (SPFs) and COE Category 3 factors of the selling carrier for the remainder of the transition period. A carrier that proposes to add exchange(s) to or delete exchange(s) from an existing study, and computes its investment and expenses on a cost basis, has the option to recompute its transitional SPF prescribed in Section 36.154 and transitional factor for COE Local Switching Equipment - Category 3 prescribed in Section 36.125 for the revised study area boundaries. If the carrier exercises these options, it shall provide the following information to the Commission:

(1) The 1981 Subscriber Plant Factors (SPFs) for each of the existing study areas, the estimated SPF for the proposed study area if it had been in existence in 1981, the present transitional SPFs for each of the existing study areas, and an estimated transitional SPF for the proposed study area;

(2) The present investment for non-traffic sensitive loop plant for each of the existing study areas and for the proposed study area;

(3) The present transitional factors for COE - Local Switching Equipment - Category 3 for each of the existing study areas and an estimated transitional factor for COE - Local Switching Equipment - Category 3 for proposed study area; and

(4) The A component and B component specified in Section 36.125 for each of the existing study areas and for the proposed study area.

APPENDIX B

Docket No. 80-286 JOINT BOARD MEMBERS

Commissioner George H. Barbour
New Jersey Board
of Public Utilities
Newark, New Jersey 07102
(201) 648-3733

Chairman Alfred C. Sikes
Federal
Communications Commission
1919 M Street, N.W. Room 814
Washington, D.C. 20554
(202) 632-6600

Commissioner Ronald L. Lehr
Colorado Public
Utilities Commission
1580 Logan Street
Denver, Colorado 80203
(303) 894-2022

Commissioner Andrew C. Barrett
Federal
Communications Commission
1919 M Street, N.W. Room 844
Washington, D.C. 20554
(202) 632-7116

Commissioner Thomas Beard
Florida Public
Service Commission
Fletcher Building
101 E. Gaines Street
Tallahassee, FL 32399-0851
(904) 488-6943

Commissioner Ervin S. Duggan
Federal
Communications Commission
1919 M Street, N.W. Room 832
Washington, D.C. 20554
(202) 894-2022

Commissioner William E. Long
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909
(517) 334-6368

FEDERAL - STATE JOINT BOARD STAFF
STATE STAFF

Ronald Choura
Chairman, Federal-
State Joint
Board Staff
Michigan Public
Service Commission
6545 Mercantile Way
Lansing, Michigan 48910
(517) 334-6240

Elton Calder
Georgia Public
Service Commission
162 State Office Building
244 Washington Street S.W.
Atlanta, Georgia 30334
(404) 656-4565

Brenda Buchan
Florida Public
Service Commission
Fletcher Building
101 E. Gaines Street
Tallahassee, FL 32399-0851
(909) 488-1280

Robert Capshaw
North Carolina
Utilities Commission
Box 29510
Raleigh, North Carolina
27626-0510
(919) 733-0846

Rowland Curry
Texas Public
Utility Commission
Suite 400 N
78000 Shoal Creek Blvd.
Austin, Texas 78757
(512) 458-0103

Paul Pederson
Missouri Public
Service Commission
5th Floor
Harry B. Truman Bldg.,
P.O. Box 360
Jefferson City, Missouri 65102
(314) 751-7427

Diane Hockman
Ohio Public
Utility Commission
180 East Broad Street
Columbus, Ohio 43266-0573
(614) 466-7533

Dean Evans
California Public
Utility Commission
California State Building
500 Van Ness Avenue
San Francisco, CA 94102-3298
(415) 557-2152

Michael P. Gallagher
New Jersey Board
of Public Utilities
2 Gateway Center
Newark, New Jersey 07102

Carl Hunt
Colorado Public
Utility Commission
1580 Logan Street
Denver, Colorado 80203
(303) 891-2028

Fred Sistarenik
New York Public
Service Commission
3 Empire State Plaza
Albany, New York 12223
(515) 486-2815

Joel B. Shifman
Maine Public
Utilities Commission
State House Station #18
Augusta, Maine 04333
(207) 289-3831

Sam Loudenslager
Arkansas Public Service Commission
1000 Center Street
P. O. Box C-400
Little Rock, AR 72203
(501) 682-5767

FEDERAL STAFF

Michael E. Wilson
Accounting and
Audits Division
Federal Communications
Commission
2000 L. Street, N. W.
Room 257
Washington, D.C. 20554
(202) 632-7500

Charles Needy
Accounting and
Audits Division
Federal Communications
Commission
2000 L. Street, N.W.
Room 257
Washington, D.C. 20554
(202) 632-7500

FOOTNOTES

[1] 47 C.F.R. Part 36, Appendix-Glossary.

[2] 47 C.F.R. §§36.154(e)(1) and (2). Section 36.154 of the Rules, 47 C.F.R. §36.154, establishes a system under which carriers will reduce the interstate portion of certain cable and wire facilities to 25 percent by 1993. During the transition to 25 percent, Section 36.154(e) requires that each carrier base its separations factor for this plant on study area data for 1981.

[3] 47 C.F.R. §36.125(f). Section 36.125 of the Rules, 47 C.F.R. §36.125, establishes a transitional period, ending December 31, 1992, during which cost companies with fewer than 50,000 access lines must use weighting factors that vary with company size to determine their separations factors for Category 3 local switching equipment. The variations are commonly referred to as the 10,000, 20,000, and 50,000 line threshholds.

[4] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, CC Docket Nos. 78-72 and 80-286, 50 Fed. Reg. 939 (1984).

[5] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, 48337 (1984).

[6] An average schedule company is a company that does not conduct separations studies to develop its interstate costs. Instead, it is reimbursed for its interstate costs through payments computed by the National Exchange Carrier Association (NECA) pursuant to Section 69.606 of the Commission's Rules, 47 C.F.R. §69.606.

[7] Missouri and Arkansas also filed a Motion to Accept Late-Filed Comments on January 8, 1990. They indicate that they did not actually receive a copy of the TDS filing until December 1, 1989 and the short deadline of December 5, 1989 did not allow for its comments. Subsequently, the Common Carrier Bureau extended the original comment period. Consequently, we accept the comments of Missouri and Arkansas.

[8] NARUC Reply at 7.

[9] TDS Reply at 5.

[10] Appendix A of this Order, which sets forth proposed amendments to Section 36.2 of this Commission's Rules, describes this information in greater detail.

[11] 5 U.S.C. §601.

[12] Because of the nature of local exchange and access service service, this Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983). Thus, this Commission is not required by the terms of the Act to apply the formal procedures set forth therein. This Commission is nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our other public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

[13] *See generally* 47 C.F.R. §1.1206(a).

[14] 47 C.F.R. §1.1202(f).

[15] 47 C.F.R. 1.1203.

[16] 47 C.F.R. §1.1202(b).

[17] 47 C.F.R. §1.1206.

[18] Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 89 FCC 2d 36 (1982).

[19] In calculating this fifteen day period, neither the day on which the material is filed nor the day on which the Joint Board meeting is scheduled shall be counted.

[20] 47 C.F.R. §§1.415 and 1.419.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Southwestern Bell Telephone Company — Transmittal No. 1994

Revisions to Tariff F.C.C. No. 68

MEMORANDUM OPINION AND ORDER

Adopted: October 2, 1990; Released: October 5, 1990

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. On May 25, 1990, Southwestern Bell Telephone Company (SWB) filed Transmittal No. 1994, to offer "Self-Healing Transport Networks (STN) Option 1," (herein STN).[1] In its Description and Justification (D&J), SWB describes STN Option 1 as a customer-specific, integrated access network in the Houston, Texas metropolitan area which SWB seeks to provide in response to a request for proposal (RFP) by American Telephone and Telegraph Company (AT&T) in June 1989.[2] STN would consist of a number of fiber optic transmission paths arranged as a pair of physically and geographically diverse fiber optic rings and associated electronics. According to SWB, this system would detect deterioration or failure in the primary ring and re-route traffic to the protection or back-up ring almost immediately, in a "self-healing," highly reliable manner. [3]

2. SWB's D&J stresses that in the RFP bidding process, AT&T specifically requested an integrated, turn-key service package with stability, flexibility, and high reliability.[4] SWB further emphasizes that the self-healing fiber optic rings it describes in this transmittal would constitute a new and distinct service relative to SWB's existing tariffs.[5] Finally, the D&J includes SWB's financial analysis purporting to show that this service would generate net revenue in each year of its five-year term.[6]

II. SUMMARY OF PLEADINGS

A. Petitions

3. Metropolitan Fiber Systems, Inc. (MFS), Teleport Communications Group (Teleport), MCI Telecommunications Corporation (MCI), and US Sprint Communications Company (US Sprint), and Advanced Telecommunications Corporation (ATC) filed petitions.[7]

4. MFS, Teleport, and MCI argue that STN is no more than a composite of discrete DS3 facilities with route diversity, already available under SWB's existing tariffs. These petitioners contend that STN and existing DS3 services are "like services" under Section 202(a) of the Communications Act, 47 U.S.C. § 202(a), and that any price differential in favor of STN would constitute unreasonable discrimination for purposes of Section 202(a).[8] In a similar vein, US Sprint and ATC charge that STN is discriminatory because only one customer, AT&T, could avail itself of this particular composite of services, at discount prices.[9] Moreover, MFS and Teleport maintain that alternative access providers will never be able to compete fairly in this arena until they have reciprocal interconnection, with actual or virtual collocation at local exchange carrier (LEC) central offices.[10]

5. Second, MFS, Teleport, MCI, and ATC all claim that STN would in effect be an individually priced DS3 service, in violation of the Commission's recent *ICB Order*.[11] Those petitioners contend that STN service should be generally available to all potential customers at averaged, cost-based prices, and that no exception to that rule is applicable here.

6. Third, MFS, MCI, and US Sprint allege that SWB's cost support under Section 61.38 of the Commission's Rules, 47 C.F.R. 61.38, is inadequate and defies meaningful cost and revenue analysis.[12] These three petitioners and ATC also contend that SWB's STN offering suffers from excessive bundling and other rate structure deficiencies, in violation of the private line guidelines of Section 61.40 of the Commission's Rules, 47 C.F.R. § 61.40.[13] Consequently, these parties argue, both the inadequate cost support and the flawed rate structure in SWB's filing pose a serious risk of creating or concealing cross-subsidies to STN in favor of AT&T, at the expense of captive ratepayers for other services.

7. Finally, Teleport argues that SWB is attempting to inject an "AT&T Tariff 12" type of service arrangement, as established in the *Tariff 12 Order*,[14] into the interstate access market before fair competition has taken hold.[15] According to Teleport, SWB assumes that a LEC's discrete collection of DS3 access elements is "unlike" an integrated system created from those elements, in the same way as AT&T's discrete collection of interexchange elements is unlike an integrated Tariff 12 option, regardless of the LEC's' greater market dominance relative to that of AT&T.

B. SWB's Reply

8. SWB first replies that STN Option 1 was designed in response to a particular RFP by AT&T and that, in the future, SWB intends to offer many other IAS options, including other custom designed versions of STN for other customers. SWB further claims that the petitioners have failed to distinguish between "general availability" and "general applicability," the latter being a specific option designed for a particular customer.[16] In addition, SWB maintains that its STN offering is a logical extension to the access market of the *Tariff 12 Order*, which it says is not limited to interexchange or competitive markets. In any case, SWB adds, there is substantial competition in the high end of the access market already.[17]

9. In addition, SWB challenges the petitioners' arguments that STN is "like" existing DS3 service with route diversity. First, SWB argues that STN is not "like" a combination of existing DS3 elements because the optical signal in STN appears electrically at every node.[18] Second, SWB claims that the protection fiber in the ring is physically separate from the primary cable and has separate protection switches, whereas existing DS3 protection systems generally share the same cable or conduit and the same protection switches.[19] Third, SWB notes that under applicable law, the customer's perception is entitled to

great weight in determining "likeness," and, in this instance, AT&T clearly perceived that it could not meet its needs with SWB's existing tariffs.[20]

10. SWB rejects petitioners' arguments that STN violates the *ICB Order*. SWB contends that with respect to the "availability" of STN service in general, as opposed to the "applicability" of Option 1 in particular, the service is not restricted to any single customer. This is consistent, SWB says, with the Commission's position in a similar context in the *Tariff 12 Order*. Further, SWB argues, it should be permitted to tariff self-healing fiber optic rings on an ICB basis for the time being because SWB has so little experience with that type of service.[21]

11. SWB also rejects petitioners' arguments that STN violates rate structure requirements of Section 61.40 of the Commission's Rules, 47 C.F.R. § 61.40, by arguing that its DS3 services are not "like" its STN services and, therefore, there can be no question of treating like elements differently. Such objections, argues SWB, were rejected in the *Tariff 12 Order* and should be rejected here for the same reasons. SWB says that even if STN were "like" DS3 for purposes of applying Section 61.40, the guidelines contained therein are recommendations rather than strict requirements.[22] Finally, SWB states that Transmittal 1994 complies with the Commission's cost support rules.[23]

III. DISCUSSION

12. SWB has failed to provide with this transmittal the detailed economic information required under Section 61.38 of the Rules, 47 C.F.R. § 61.38. The D&J provides virtually no supporting data for its narrative and no workpapers or underlying data to support its summary cost data. Instead, it refers to a cost model, with no detail whatsoever, which SWB purportedly used to calculate the revenue requirement for STN service. Moreover, SWB furnishes only annual investment and expenses for the entire, aggregated STN Option 1 network. Based on SWB's cost support, it is impossible to determine the relevant recurring and non-recurring costs for the facilities and activities involved in delivering the service or the recognition of various overhead expenses. Nor is it possible to ascertain the cross-elastic effects which introduction of the service would create, as required by Section 61.38(b)(2)(ii).[24]

13. On September 11, 1990, SWB filed, on its own initiative, a Transmittal which attempts to amplify its cost support. While this material yields additional documentation for determining expenses, SWB still fails to provide any information on STN-related investment, and fails to provide any showing of the demand and revenue effects of STN on other services. Thus, SWB's September 11 filing fails to remedy the deficiencies in the cost support materials.

14. The information required by Section 61.38 enables us to determine whether an investigation or suspension is warranted pursuant to Section 204. By failing to comply with Section 61.38 and to provide the information required by that Rule, SWB has frustrated our efforts to discharge our statutory responsibilities. Therefore, we reject Transmittal No. 1994.

IV. CONCLUSION; ORDERING CLAUSES

15. We conclude that the lack of adequate cost support for Transmittal 1994 violates Section 61.38 or the Commission's Rules and renders this SWB transmittal unlawful. For this reason, we reject Transmittal No. 1994.

16. Accordingly, IT IS ORDERED that Southwestern Bell Telephone Company Tariff F.C.C. No. 68, Transmittal No. 1994 IS REJECTED.

17. IT IS FURTHER ORDERED that Southwestern Bell Telephone Company SHALL ISSUE revisions to the tariff no later than five business days from the release of this Order removing the rejected material from its tariff. These revisions shall be scheduled to become effective on not less than one day's notice.

18. IT IS FURTHER ORDERED that Special Permission No. 90-1077 IS ASSIGNED and Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59, ARE WAIVED for the purposes of issuing the above revision.

19. IT IS FURTHER ORDERED that the petitions to reject Transmittal No. 1994 ARE GRANTED to the extent discussed herein, and otherwise ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] STN Option 1 is the first part of what SWB states will be a larger set of region-wide, high-capacity services, called "Integrated Access Service" (IAS).

[2] D&J at 2-3.

[3] *Id.* at 4-8. In this particular option, the two rings would each consist of 30 "Digital Transmission Links" (DTLs) and 19 associated "Network Access Points" (NAPs) arranged in an overlapping figure eight. According to SWB, DTLs are optical fiber transmission lines with DS3 capacity that connect one NAP to another. NAPs are either SWB central offices or one of two AT&T points of presence (POPs) in the ring. SWB would charge a fixed monthly fee of $174,200 and a nonrecurring charge of $12,000 for AT&T's initial set of 30 DTLs and 19 NAPs. The filing specifies a fixed five-year term, with penalties for early withdrawal, and options for year-to-year renewals after the five-year term, with assured future discounts. *Id.* at 14-15.

[4] *Id.* at 2-4.

[5] *Id.* at 4-5.

[6] *Id.* at 10-28.

[7] Metropolitan Fiber Systems, Inc., Petition To Reject or To Suspend and Investigate, filed June 11, 1990; Teleport Communications Group, Petition To Reject or To Suspend and Investigate, filed June 11, 1990; MCI Telecommunications Corporation, Petition To Reject, filed June 11, 1990; US Sprint Communications Company, Petition To Reject or Alternatively Suspend and Investigate, filed June 11, 1990; Advanced Telecommunications Corporation, Petition To Investigate, filed June 11, 1990.

[8] *See* American Broadcasting Companies, Inc. v. FCC, 663 F.2d 133, 138 (D.C. Cir. 1980)(*ABC*); Ad Hoc Telecommunications Users Committee v. FCC, 680 F.2d 790, 795 (D.C. Cir. 1982); MCI Telecommunications Corp. v. FCC, 842 F.2d 1296, 1307 (D.C. Cir. 1988).

[9] US Sprint Petition at 2-4; ATC Petition at 1-2.

[10] MFS Petition at 8; Teleport Petition at 7-13.

[11] MFS Petition at 18-21; MCI Petition at 4-5; US Sprint Petition at 7-9; *citing* Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, 4 FCC Rcd 8634 (1989) (*ICB Order*); *recon.*, 5 FCC Rcd 4842 (1990). ATC states that it has no objection to STN if the transmittal is clarified to assure that the service is generally available, rather than an ICB offering for one customer only. ATC Petition, *passim*.

[12] MFS Petition at 15-18; MCI Petition at 6-9; US Sprint Petition at 7-9. In this context, US Sprint also states that the net revenue test which SWB uses in its cost support was adopted by Commission for reviewing interexchange carrier optional calling plans but has never been approved for use in access filings. *Id.* at 7.

[13] MFS Petition at 20-21; MCI Petition at 4-5; US Sprint Petition at 5-6; ATC Petition at 4.

[14] AT&T Communications, Revisions to Tariff F.C.C. No. 12, 4 FCC Rcd 4932 (1989), *recon.*, 4 FCC Rcd 7928 (1989), *appeal pending*.

[15] Teleport Petition at 4.

[16] SWB Reply at 2-5.

[17] *Id.* at 6-9.

[18] *Id.* at 11.

[19] *Id.* at 10-14.

[20] *Id.* at 14-15.

[21] *Id.* at 18-22.

[22] *Id.* at 22-24.

[23] *Id.* at 24-25.

[24] The SWB reply does not address the specific arguments of the petitioners concerning possible cross-subsidization. SWB merely reiterates SWB's contention that SWB's cost model calculated the annual revenue requirement correctly and that the rates will recover fully distributed costs.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 82-243

In the Matter of

Amendment of Parts 1, 21, 22, 74, and 94 of the Commission's Rules to Establish Service and Technical Rules for Government and non-Government Fixed Service Usage of the Frequency Bands 932-935 MHz and 941-944 MHz.

FOURTH NOTICE OF PROPOSED RULE MAKING

Adopted: October 5, 1990; Released: October 12, 1990

By the Commission:

1. By this action, the Commission proposes to adopt rules that will limit the number of applications a party can file in the Government/Non-Government Fixed Service for point-to-multipoint channels in a particular market. Our intent is to preclude parties from filing multiple applications for the purpose of increasing their likelihood of success in any lottery held to select licensees. This will ensure fairness in the lottery process and lessen the administrative burden for both applicants and the Commission. This proposal responds to a petition for reconsideration filed by the Utilities Telecommunications Council (UTC) in this proceeding.[1]

BACKGROUND

2. In the November 1984, *First Report and Order* in this proceeding, the Commission allocated the 932-935/941-944 MHz bands for Government and non-Government fixed service users on a co-primary basis.[2] Subsequently, in March, 1987, the Commission issued a *Third Notice of Proposed Rule Making* (*Third Notice*), that proposed procedures and rules to be followed in applying for and using the 932-935/941-944 MHz bands. [3] In particular, the *Third Notice* proposed that the entire allocation be used for point-to-point applications, but requested comment on the desirability of allowing point-to-multipoint entities to access a portion of the allocation.[4] Parties commenting on the *Third Notice* unanimously favored the designation of at least one megahertz of spectrum for point-to-multipoint use. The Commission found these comments persuasive, and, therefore, in February, 1989, the Commission adopted a *Second Report and Order* wherein, among other things, it designated the 932-932.5/941-941.5 MHz bands for point-to-multipoint use.[5]

3. In April 1989, five parties filed Petitions for Clarification and/or Reconsideration of the *Second Report and Order*. For the most part, all five filings concerned the point-to-multipoint portion of the allocation; *i.e.* the 932-932.5/941-941.5 MHz bands. The Commission issued a *Memorandum Opinion and Order* in March 1990 that clarified the frequency coordination procedures to be followed in coordinating applications.[6] It also indicated when applications will be considered mutually exclusive and the procedures for selecting among competing applicants. With respect to the point-to-multipoint applications, the Commission decided to conduct a nationwide lottery wherein all applications received would be ranked and then processed in the order of their ranking. Finally, the *Memorandum Opinion and Order* addressed several minor issues relating to the point-to-multipoint portion of the allocation.

4. In accordance with the *Memorandum Opinion and Order*, the Commission's Office of Engineering and Technology (OET) released a *Public Notice* on June 4, 1990, that solicited applications in the new fixed service.[7] The *Public Notice* established an initial one-week filing window from July 9 until July 13, during which applications would be accepted and also reiterated that lotteries would be used to resolve instances of mutually exclusive applications.

5. Prior to the opening of this filing window, however, UTC filed concurrent petitions with the Commission requesting that the window be stayed and that the application filing procedures be clarified or reconsidered.[8] In support of this request, UTC cited the failure of the *Public Notice* to prohibit applicants from filing multiple applications for the same communications requirement merely as a means of improving their odds of receiving a channel in a lottery.[9] UTC contended that as a result of this omission, and the Commission policy in other services of limiting the filing of multiple applications in lotteries, applicants would be uncertain as to whether they could file multiple applications during the filing window. In its *Reconsideration Petition*, UTC requested that the Commission remove this uncertainty by clarifying whether multiple applications for the same site or service area would be accepted from the same or substantially the same applicant, absent a special showing of need in accordance with current Commission licensing policies. While UTC preferred that the Commission limit the number of applications that any applicant may file within a given geographic area, it was most concerned that all potential applicants receive clear guidance on the filing of multiple applications before the Commission commenced accepting the point-to-multipoint applications.[10] On July 2, 1990, OET released an *Order* granting the stay of its filing window, as requested by UTC.[11]

DISCUSSION AND PROPOSALS

6. We believe that UTC's concern regarding the need to address the issue of whether an applicant can file more point-to-multipoint applications in a market to improve its chances in the lottery has merit.[12] Since the Commission began to use lotteries to select among competing applicants in recent years, it has usually precluded applicants from filing applications that have no purpose but to increase their chances of success in the lottery. For instance, in the cellular service the Commission permits parties to file only one application per market and has strict limits on any particular individual's ability to have an interest in more than one application in a market.[13] Similar requirements appear to be warranted with respect to the point-to-multipoint channels recently made available in this proceeding. It has become clear to us that the legitimate communications requirements of point-to-

multipoint users will exceed the number of channels available in major urban areas. Therefore, allowing multiple applications to be filed for the same point-to-multipoint requirement would simply add to the number of applications that could not be granted and place a large administrative burden on both the applicants and the Commission. We have received indications that certain entities were preparing to file hundreds of duplicate applications during the initial filing window for the 932-932.5/941-941.5 MHz frequencies merely to gain an advantage in the lottery. This would increase the level of repetitious processing, resulting in inefficiencies and delayed service to the public. More importantly, permitting multiple applications for these channels would also unfairly provide an advantage to fee-exempt entities and applicants with substantial financial resources.[14] Thus, we believe a rule prohibiting such practices is warranted.[15]

7. While we believe that the filing of multiple applications for the purpose of increasing an applicant's chances in a lottery should be prohibited, we also recognize that an applicant having a legitimate need for more than a single point-to-multipoint channel in a particular market should not be precluded from applying for multiple facilities. Therefore, any rule that we craft must take into account the legitimate needs of potential applicants. Further, we believe that the differing nature of point-to-multipoint uses under Parts 22 and 94 of the Commission's Rules requires separate rules for each service.

8. Common carrier Part 22 point-to-multipoint, or multiple address, systems use of fixed facilities consists of controlling one-way signaling operations. Typically, a Part 22 multiple address control station communicates with four or more base station transmitters that in turn communicate with individual paging receivers; these base stations must be listed in the application. We anticipate that most Part 22 applicants for the 932-932.5/941-941.5 MHz bands will require only one frequency per service area. However, we recognize that some applicants may have a need to control base stations in more than one paging system in a particular service area. Thus, restricting Part 22 applicants to only one application per service area could run counter to the public interest because it might prevent a paging control requirement from being fulfilled. We believe that a better approach is to prohibit these applicants from identifying the same base station in multiple applications.[16] Therefore, we propose to change Section 22.501(g)(1) to provide that an application for a multiple address control frequency subject to this rule making cannot propose to serve any base station that is listed in a different application for these same frequencies. We also propose to clarify that the control station may control a base station that is co-located with it; *i.e.* one of the four base stations does not have to be "remote" from the control station. Given that all control stations will have to control at least four simultaneously operated base stations on the same frequency assignment to qualify for licensing under Section 22.501(g)(1), this rule, as modified, should adequately prevent Part 22 applicants from filing multiple applications merely to increase their chances of winning in the lottery.

9. Part 94 users typically construct stations that communicate with more locations than the typical Part 22 station.[17] As we do not require these users to specify remote station coordinates on their applications, we must, therefore, rely on a different criterion to determine whether an entity has filed duplicate applications. We tentatively conclude that a mileage separation will satisfy our concerns about duplicate applications from Part 94 users without unduly complicating the licensing process. The technical parameters associated with multiple address system design are expected to provide licensees with service areas of approximately 25 miles. Therefore, we propose to prohibit any party from having an ownership interest, direct or indirect, in two or more applications that specify sites within 25 miles of each other, unless all applications having such common ownership within the 25 mile area acknowledge the party's common interest in the applications and describe in detail how each system will be serving different needs; *e.g.*, segregable communications requirements or services.[18] If any application subject to this prohibition fails to make the appropriate acknowledgement, we propose that that application and all others having a commonality of interest within 25 miles be dismissed. If the appropriate showing is made but is found inadequate, the applicant would be permitted to choose which duplicative application[s] would be dismissed.

10. In summary, we are proposing that in the 932-932.5/941-941.5 MHz point-to-multipoint bands, Part 22 applications be limited by prohibiting duplicative control of base stations by any applicant and that Part 94 applications be limited by prohibiting more than one application by an applicant within a 25-mile service area, unless a showing of the need for multiple facilities is made. We believe that the modified rules proposed for Part 22 and 94 applicants will ensure that equitable treatment is accorded to all potential users of the bands, will preclude multiple applications that merely serve to bias the lottery, and will enable those who require these channels to satisfy their needs adequately. Comments are requested on the need for these requirements and our particular proposals.[19]

INITIAL REGULATORY FLEXIBILITY ANALYSIS

11. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 603, the Commission finds as follows:

I. Reason for Action

This action is being initiated in order to resolve the issue of multiple applications being filed for point-to-multipoint channels in the 932-932.5/941-941.5 MHz bands for the purpose of increasing the applicant's chances in any subsequent lottery. This issue had not been brought to the Commission's attention prior to June 1990, when a Petition for Reconsideration of a *Public Notice* was received. Two modified rules proposed in this *Fourth Notice of Proposed Rule Making* would limit applications under Parts 22 and 94 of the Commission's Rules to only the number of channels actually required in a particular market.

II. Objective

The objective of this proposal is to ensure that equitable treatment is accorded applicants for channels in the 932-932.5/941-941.5 MHz bands by preventing the filing of multiple applications for the same communications requirement.

III. Legal Basis

The proposed action is authorized under sections 4(i) and 303(f), (g), and (r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i) and 303(f), (g), and (r). These sections authorize the Commission to make such rules and regulations as may be necessary to improve the efficiency of spectrum use.

IV. Description, Potential Impact, and Number of Small Entities Affected

The proposed action would allow small entities who are not exempt from filing fees the opportunity to apply for channels in the 932-932.5/941-941.5 MHz bands on a more equal footing with those entities possessing greater financial resources and with fee-exempt entities. We do not expect our proposed rules to have any adverse impact on small entities because, as tailored, they will enable applicants to request those facilities for which they have an actual need. We invite interested parties to comment on these points.

V. Reporting, Record Keeping and other Compliance Requirements

No new requirements will be imposed.

VI. Federal Rules which Overlap, Duplicate, or Conflict with this rule

None.

VII. Significant Alternatives

Multiple applications for the 932-932.5/941-941.5 MHz bands could be handled in a variety of ways, including permitting them or simply permitting only one channel per applicant per market. We believe, however, that our proposals are the most equitable, given the differences in Parts 22 and 94 of the Commission's Rules. However, we welcome comments from interested parties on our proposals and the desirability of limiting applications in alternative ways.

12. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

13. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

14. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206.

15. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary and must be labeled or captioned as an *ex parte* presentation. Section 1.1206.

16. This action is taken pursuant to sections 4(i) and 303(f), (g), and (r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i) and 303(f), (g), and (r).

17. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before *November 7, 1990* and reply comments on or before *November 19, 1990*. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

18. For further information concerning this rule making contact Mr. Rodney Small at (202) 653-8116, Office of Engineering and Technology, Federal Communications Commission, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX – PROPOSED RULE AMENDMENTS

1. Part 22 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 22 – PUBLIC MOBILE SERVICES

2. The authority citation for Part 22 would continue to read as follows:

Authority: 47 U.S.C 154, 303, unless otherwise amended.

3. Section 22.501 is proposed to be amended by revising paragraph (g)(1) to read as follows:

Section 22.501 Frequencies.

* * * * *

(g)(1) The frequencies listed in this paragraph are available for control stations utilized within a multiple address system that requires the use of at least four simultaneously operated base stations operated on the same frequency assignment. These frequencies will be assigned only when there are four or more base station sites on the same frequency listed on the application for license. For purpose of this four base station limitation, base stations proposed to be controlled in the 932-932.5/941-941.5 MHz bands in any multiple address control application filed pursuant to this subsection cannot be listed in, or counted towards, the four base station requirement of any other pending applications for the 932-932.5/941-941.5 MHz bands. The frequencies may be used in paired or unpaired configurations. When paired, the higher frequency will be used by the control/relay station, and the lower frequency will be used by the control station.

* * * * *

4. Part 94 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 94 -- PRIVATE OPERATIONAL - FIXED MICROWAVE SERVICE

5. The authority citation for Part 94 would continue to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

* * * * *

6. Section 94.15 is proposed to be amended by revising paragraph (g) to read as follows:

Section 94.15 Policy governing the assignment of frequencies.

* * * * *

(g) Except as provided in paragraph (h) of this section, applicants requiring multiple transmit frequencies employed on separate paths from a single station location will not normally be authorized more than four of the transmit frequencies available in the band. Further, master and remote stations using frequencies listed in Section 94.65(a)(1) of this part will not normally be authorized more than four (12.5 kHz) frequencies or frequency pairs. In the 932-932.5/941-941.5 MHz bands, applicants may not apply for a frequency or frequency pair within a 25 mile radius of the location of any previous license it has received or for which it has concurrently applied in the 932-932.5/941-941.5 MHz bands. Further, in these same bands, no party may have an ownership interest, direct or indirect, in two or more applications proposing sites within 25 miles of each other, unless all applications having such common ownership within the 25 mile area contain a statement acknowledging the commonality of ownership and describe in detail how each proposed system will serve a different communications need. Such descriptions will be evaluated by the Commission in determining the applicant's need for multiple frequencies. If any application subject to the foregoing requirement fails to contain the acknowledgement of ownership interest, all applications with a commonality of interest located within 25 miles will be dismissed.

* * * * *

7. In Section 94.73, the table in paragraph (a) is proposed to be amended by deleting footnote one and changing the first sentence in footnote three to read as follows:

Section 94.73 Power Limitations.

(a) * * *

[3] For multiple address operations, see Section 94.65(a)(1)(v).

* * * * *

FOOTNOTES

[1] *See* "Petition for Reconsideration or Clarification on Application Filing Procedures" (*Reconsideration Petition),* filed by UTC on June 22, 1990. We note that the issue of multiple applications was neither addressed nor was a record developed concerning it in this proceeding. Therefore, we are addressing this issue through a further rule making proceeding.

[2] *See First Report and Order*, GEN Docket No. 82-243, 50 FR 4650 (1985).

[3] *See Third Notice of Proposed Rule Making*, GEN Docket No. 82-243, 2 FCC Rcd 1608 (1987).

[4] *Third Notice*, *supra*, at para. 5.

[5] *See Second Report and Order*, GEN Docket No. 82-243, 4 FCC Rcd 2012 (1989). The *Second Report and Order* also specified that coordination between Government and non-Government users would be accomplished via the Interdepartment Radio Advisory Committee of the National Telecommunications and Information Administration (NTIA).

[6] *See Memorandum Opinion and Order*, GEN Docket No. 82-243, 5 FCC Rcd 1624 (1990), *recon. pending.*

[7] *See Public Notice*, 5 FCC Rcd 3547 (Chief Engineer 1990).

[8] *See* "Petition for Stay of Filing Window" (*Stay Petition)* and *Reconsideration Petition,* filed by UTC on June 22, 1990. Florida Power Corporation, Houston Lighting & Power Company, and South Carolina Electric & Gas Company filed comments in support of both petitions; DT, Inc. filed comments in support of the *Reconsideration Petition;* and Brown and Schwaninger and Metropolitan Houston Paging Services, Inc. filed comments ad-

dressing the *Reconsideration Petition*. UTC filed a reply to Brown and Schwaninger's comments. Brown and Schwaninger filed a response to UTC's reply; UTC filed a *Motion to Strike* this last submission on the grounds that it was an unauthorized pleading; Brown and Schwaninger filed an *Opposition to Motion to Strike*.

[9] *Stay Petition*, at pages 1-2.

[10] *Reconsideration Petition*, at pages 1-2.

[11] *See Order*, 5 FCC Rcd 4042 (Chief Engineer 1990).

[12] With regard to the point-to-point channels, we do not believe that any limitation on the number of applications an entity can file is necessary. The size of the point-to-point allocation and the nature of point-to-point assignments are such that lotteries are rare, and there is little to gain by filing multiple applications for these channels. As we stated in the *Third Notice*, "because these channels are for point-to-point uses, it should not be difficult to satisfy most, if not all, needs for a significant amount of time." *See Third Notice, supra*, para. 11. Accordingly, on August 23, 1990, the filing window for point-to-point channels was re-opened. *See Public Notice*, DA 90-1123 (Chief Engineer 1990).

[13] *See* 47 CFR section 22.921. *See also* 47 CFR section 73.3517 (Filing of contingent applications generally prohibited in the Broadcasting Services).

[14] Fee-exempt entities would bear only minor administrative costs in filing multiple applications. Financially-constrained entities who are not exempt from fees, on the other hand, would face a major cost burden in filing multiple applications. Therefore, if the Commission were to allow the filing of multiple applications, we would anticipate that a disproportionately large number would come from fee-exempt entities and those with substantial financial resources, while a disproportionately small number would come from financially-constrained, non-fee-exempt entities. It would also be possible for Federal Government entities to file multiple applications for each facility they might desire without a significant economic burden as they are fee-exempt and file their applications electronically. NTIA has assured us that it supports a policy of only a single application for each Government communications requirement, so long as the non-Government applicants are subject to this same standard.

[15] In *Applications of Exxon Communications Company for Multiple Address Systems Licenses in the Private Operational-Fixed Microwave Service*, FCC 85-521, released October 3, 1985, we concluded that Exxon had not abused our processes by filing six multiple address system applications in the Houston area when it required only two channels. The present situation is different from that presented in the Exxon proceeding. In that proceeding, Exxon filed one application in six separate mutually exclusive situations in the Houston area; it did not file multiple applications in a single lottery. There was no rule prohibiting its actions, and we did not consider its practice to be an abuse of process as its goal was to maintain standing in each lottery and not to gain an unfair advantage over competing contestants in the lotteries. As noted above, we believe that the circumstances are different in this instance.

[16] As we do not wish to preclude these applicants from upgrading their facilities, we see no need to preclude applicants from listing a site that is already being served by a licensed facility.

[17] Different terminology is used to describe Part 22 and Part 94 multiple address systems. In general, Part 22 multiple address systems consist of a centrally located "control station" communicating on a one-way basis with outlying "base stations", while Part 94 systems consist of a centrally located "master station" communicating on a two-way basis with outlying "remote stations."

[18] Under this proposal, individual applicants would be permitted to request more than one 12.5 kilohertz channel per master station based on a suitable showing of need for multiple channels. *See Memorandum Opinion and Order, supra*, at para. 31.

[19] It has also come to our attention that two minor errors exist in a table in Section 94.73 of our Rules. Therefore, we are taking this opportunity to propose changes to the table to correct these errors.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications — Transmittal No. 2422

Revisions to Tariff F.C.C. No. 1

ORDER

Adopted: October 10, 1990; Released: October 10, 1990

By the Chief, Common Carrier Bureau:

1. AT&T Communications (AT&T) filed Transmittal No. 2422 to revise the shortfall and discontinuance provisions contained in its Expanded Volume Plan (EVP) for Software Defined Network Service (SDN). Ad Hoc Telecommunications Users Committee (Ad Hoc) filed a petition to reject or suspend and investigate; AT&T replied.[1] The tariff is scheduled to become effective on October 11, 1990.

2. Under current tariff provisions, a customer who discontinues service prior to the end of the applicable EVP term is liable for repayment of all discounted amounts under the EVP, *i.e.*, for returning all benefits derived from the EVP. Under AT&T's tariff revisions, existing as well as new customers who discontinue service prior to the end of the EVP term would be liable for shortfall charges for the remainder of the term plan, over and above repayment of discounts for years in which service was actually taken under the EVP. The shortfall charges are imposed in addition to the discontinuance charges.

3. Ad Hoc objects to the application of the revisions to existing customers. In addition, Ad Hoc maintains that these revisions significantly alter the terms of preexisting service arrangements. Ad Hoc Petition at 4. According to Ad Hoc, a carrier must demonstrate a substantial cause for change in order to justify revising an existing tariff. Ad Hoc maintains that AT&T has not made the required showing, which requires a balancing test between the carrier's right to adjust its tariff in accordance with its business needs and objectives and the customers' reliance upon the rates and terms to which they have committed. *Id.* at 4. Ad Hoc also seeks rejection of AT&T's new termination liability provisions on the basis that these provisions are unjust and unreasonable. *Id.* at 6-7.[2]

4. AT&T maintains that the substantial cause test is not applicable because Transmittal 2422 merely clarifies the existing tariff language pertaining to termination liability. Moreover, AT&T claims that even if the tariff revisions are considered substantial changes, such a change is permissible because there is no commitment in the EVP that the rates, terms, and conditions of the EVP will not change. AT&T Reply at 3-4.

5. On September 28, 1990, AT&T filed Application No. 856 for special permission to file revisions to Transmittal 2422. Those revisions modify the discontinuance provisions, allow existing EVP customers the option of using the new discontinuance provisions or the old provisions, whichever is more beneficial, and remove the tariff revisions which would have applied increased deposit requirements. AT&T's application was granted on October 5, 1990. *See* note 1, *supra*.

6. The Common Carrier Bureau has reviewed the tariff revisions and the pleadings. We conclude that no compelling argument has been presented that the tariff revisions are patently unlawful so as to require rejection and that no question has been presented that warrants investigation at this time.

7. Accordingly, IT IS ORDERED that the petition to reject or suspend and investigate AT&T Communications Tariff F.C.C. No. 1, Transmittal No. 2422, filed by the Ad Hoc Telecommunications Users Committee IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] On October 5, 1990, AT&T filed Application No. 856 for special permission to revise Transmittal No. 2422. The Tariff Division granted the application on October 5, 1990, in Special Permission No. 1074.

[2] Ad Hoc's petition was not filed in a timely manner and, accordingly, Ad Hoc filed a motion to accept its late-filed pleading. Ad Hoc's motion is not opposed. Since Ad Hoc's petition was only one day late, and Ad Hoc presented a reasonable explanation for the causes of the delay, we will grant Ad Hoc's motion.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Ameritech Operating Companies — Transmittal No. 463

Revisions to Tariff F.C.C. No. 2

ORDER

Adopted: October 12, 1990; Released: October 12, 1990

By the Chief, Common Carrier Bureau:

1. On July 16, 1990, the Ameritech Operating Companies (Ameritech) filed Transmittal No. 463 to, *inter alia*, introduce a new digital service offering called OPTINET Base Rate Service (BRS). The filing is scheduled to take effect October 14, 1990. OPTINET BRS has a non-hubbed architecture which can be provided over both copper and fiber plant, and will be available from almost all Ameritech central offices. Ameritech expects that OPTINET BRS will be an alternative to its existing direct digital and direct analog services for the transmission of data. Ameritech Transmittal No. 463, Description and Justification at 2.

2. On July 31, 1990, MCI Communications Corporation (MCI) filed a petition to suspend, and Metropolitan Fiber Systems, Inc. (MFS) filed a petition to reject, or alternatively, suspend and investigate the tariff transmittal. MCI supports Ameritech's offering of OPTINET services, but claims that Ameritech has overpriced this service by using the Fully Distributed Costs (FDC) factors from its original transmittal for the 1990 Annual Access Filing. According to MCI, this has the consequence of including costs for the new service that the Bureau has recently disallowed,[1] and thus Ameritech should refile new rates using FDC factors which are consistent with the 1990 Annual Access Order. MCI Petition at 2-3.

3. MFS, on the other hand, is concerned that Ameritech may be underpricing OPTINET BRS to obtain an unreasonable competitive advantage. MFS Petition at 1-2. MFS complains that Ameritech has not adequately identified which facilities will be used for OPTINET BRS, and has not supported its proposal with adequate cost data. *Id.* at 3-7. MFS is also concerned about the price differential between high speed and low speed digital service under the proposal. *Id.* at 5-6. Moreover, MFS questions Ameritech's demand and revenue projections, complaining that there is no stated basis for Ameritech's projection that 25 percent of the demand for OPTINET BRS will come from new customers or any explanation of how this demand will generate 31 percent of the revenues. *Id.* at 8-9. Finally, MFS is concerned that the proposal will lead to unjustified geographic rate deaveraging since it appears that the service will only be available in large metropolitan areas, where Ameritech is constructing "fiber rings." *Id.* at 9.

4. In its opposition, filed on August 10, 1990, Ameritech responds that it has provided detailed cost and demand data for Transmittal No. 463, and that the pricing of OPTINET BRS correctly reflects the 1990 Annual Access Order revenue requirement disallowances in developing FDC for recurring rates. Ameritech Opposition at 4. According to Ameritech, MFS's arguments are based on an incorrect assumption that OPTINET BRS will only be provided via a fiber ring, and that OPTINET BRS will be provided primarily over copper wire. *Id.* at 6. Ameritech further argues that it is incorrect to assume that the service will only be available to customers in large metropolitan areas since OPTINET BRS will be immediately available in 1,193 of the 1,204 Ameritech central offices. *Id.* at 7. Ameritech also refutes MFS's claim that OPTINET represents geographic rate deaveraging, noting that rates will be uniform and service will be available in virtually all of the region served by Ameritech. *Id.* at 8.

5. In addition, Ameritech contends that MFS compared the wrong services in its analysis of cost differentials between high and low speed digital service. *Id.* at 8-9. Finally, Ameritech contends that there can be no historical data to show demand for a new service. Regarding the revenue projections, it explains that new customers will be paying non-recurring charges (NRC) which customers transferring from existing digital service will not have to pay. Ameritech states that if the NRC revenues are factored out, new customers will comprise 25 percent of demand and will account for 22 percent of revenues. *Id.* at 9-11.

6. The Common Carrier Bureau has reviewed Ameritech Transmittal No. 463, the petitions, and Ameritech's opposition. We conclude that no compelling argument has been presented that the tariff revisions are patently unlawful so as to require rejection, and that no question has been presented that warrants investigation at this time.

7. Accordingly, IT IT ORDERED that the petition to suspend filed by MCI Communications Corporation and the petition to reject, or alternatively, suspend and investigate Ameritech's Tariff F.C.C. No. 2, Transmittal No. 463, filed by Metropolitan Fiber Systems, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Annual 1990 Access Tariff Filings, CC Docket No. 90-320, Memorandum Opinion and Order, DA 90-845, released June 21, 1990 (Com. Car. Bur.), and Order, DA 90-887, released July 2, 1990 (Com. Car. Bur.).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

New England Telephone and Telegraph Company — Transmittal Nos. 1080 and 1094

Revision to Tariff F.C.C. No. 40

ORDER

Adopted: October 12, 1990; Released: October 12, 1990

By the Chief, Common Carrier Bureau:

1. By Transmittal No. 1080, New England Telephone and Telegraph Company (NET) introduces Serving Wire Center Avoidance (SWCA), an optional feature for customers of high capacity 1.544 Mbps or 45 Mbps service. This feature would provide high capacity channel terminations over an alternative route to an alternate serving wire center. The feature would permit a customer to request that all or a portion of its special access high capacity service traffic be routed through an alternate wire center designated by NET. This routing could also be utilized in the event a customer's primary serving wire center experiences operational problems. NET asserts that this option is proposed in response to specific demand by its customers to receive service from an alternate central office and for disaster recovery measures. NET Tr. 1080, Section 7.2.9(D)(5); Description and Justification (D&J), Section 1.1, at 2.

2. The montly rate for distance sensitive channel terminations associated with SWCA is applied at each point of termination and is based on the airline distance between the customer's premises and the primary serving wire center. Tr. 1080, Section 7.2.9.(D)(5). The new SWCA rate element recovers, *inter alia*, the loop costs which would otherwise go unrecovered in those cases in which the customer's alternate loop is longer than the customer's primary service loop. D&J Section 2 at 2.

3. On behalf of Teleport Communications-Boston, Teleport Communications Group (TCG) filed a petition to reject, or suspend and investigate, Transmittal 1080 on August 1, 1990. In that petition, TCG challenges the new SWCA rate element, arguing that it is unreasonably discriminatory because a more cost-based means of recovering costs already exists in the tariff. TCG Petition at 2. TCG objects to the fact that the SWCA channel termination charge will not be based on the distance between the customer's premises and the SWCA serving wire center, but will instead be based on the distance between the customer's designated premises and the primary serving wire center. TCG Petition at 2.

4. TCG asserts that this pricing methodology is not consistent with NET's tariffed high capacity rates, which contain a precise means of measuring and charging for mileage. *Id.* at 3. TCG contends that NET has not justified the differences in these rates or explained why existing high capacity rates are not adequate to recover the distance-sensitive costs of the SWCA loop. *Id.* at 5.

5. Finally, TCG interprets NET's statement that the "new SWCA charge will be offered on a channel termination basis" to mean that the SWCA charge will replace the mileage component of the channel termination rate element and the channel mileage rate element. *Id.* at 3. TCG asserts that NET's elimination of the channel mileage rate element results in an unjustified price discount. *Id.* at 4.

6. In opposition, NET states that TCG's showing is insufficient to justify rejection or suspension of Transmittal 1080 because no evidence of harm was provided and no specific violations of the Communications Act or Commission rules were cited. NET Opposition at 2. Additionally, NET asserts that TCG's allegations evince a misunderstanding of the proposed SWCA service and NET's existing rate structure. *Id.* at 3.

7. Specifically, NET contends that the SWCA monthly charge is not a substitute for the channel termination rate element and the channel mileage rate element, but is assessed in addition to those elements for service over the alternate route. *Id.* at 4. NET explains that, by charging for services routed to the alternate office as if they were routed to the primary serving wire center, an individual customer's channel termination charge will not depend on the traffic routing path chosen by NET for its convenience -- which could result in price advantages for some customers and disadvantages to others. *Id.* at 5. NET concludes that the new SWCA rate element, imposed in addition to appropriate tariff charges for the high capacity services carried on the alternate route, is the most appropriate and equitable means for recovering the costs incurred in providing SWCA service. *Id.* at 5.

8. The Common Carrier Bureau has reviewed NET Transmittal No. 1080 as modified by Transmittal No. 1094, TCG's petition, and related pleadings. We conclude that no compelling argument has been presented that the tariff is so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

9. Accordingly, IT IS ORDERED that the petition to reject, suspend, or investigate New England Telephone and Telegraph Company Tariff F.C.C. No. 40, Transmittal No. 1080, filed by the Teleport Communications Group, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company
Petition for Limited Interim Waiver of
Requirements of Third Computer Inquiry

ORDER

Adopted: October 5, 1990; Released: October 19, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On July 3, 1990 the American Telephone and Telegraph Company (AT&T) agreed to purchase certain assets of the Western Union Corporation (Western Union).[1] At present, Western Union is providing services to customers through the use of those assets. The requirements of the Commission's Third Computer Inquiry do not apply to Western Union's provision of services, but will apply to AT&T when it acquires Western Union's assets and becomes the service provider.[2] On August 17, 1990, AT&T filed a petition seeking a six-month waiver of the *Computer III* requirements to permit Western Union's customers to receive uninterrupted service when AT&T acquires Western Union's assets. [3] In this Order, we grant a six-month waiver and require AT&T to file any necessary CEI plans for Western Union's enhanced services within 120 days of the closing date of its purchase of Western Union's assets.

II. THE PETITION

2. AT&T states that it contracted to purchase Western Union assets that are used to provide several domestic and international services. AT&T states that the assets include 188 packet assemblers/disassemblers (PADs) and 21 packet switches that are connected by digital facilities that Western Union leases from Telecom USA, Inc. The petition states that the packet switches and PADs are used to provide enhanced services, including electronic mail, electronic data interchange, and information retrieval services.[4] Based upon a preliminary examination, AT&T states that it has concluded that the assets may also be used to provide basic packet switching services.[5] AT&T states, however, that it does not now have the information necessary to determine what basic services are being provided by Western Union, or the rates, terms, and conditions under which those services are being provided.[6]

3. AT&T notes that Western Union has been providing enhanced services for several years and, as a non-dominant carrier, has not been subject to the Commission's *Computer III* requirements. By contrast, AT&T may only provide enhanced services on an integrated basis if it complies with the *Computer III* requirements, by filing CEI plans, taking the underlying basic services at tariffed rates, and acting in accordance with the other nonstructural safeguards. AT&T states that it cannot comply immediately with the requirements that Western Union's enhanced services take the underlying basic service at tariffed rates, and offer the same service to others at the same tariffed rates, since it does not have sufficient information to determine what basic services are being provided to Western Union's customers.[7]

4. AT&T states that Western Union's collocated enhanced services present an additional complication since, under the *Computer III* rules, AT&T cannot offer collocated enhanced services without an approved CEI plan. AT&T states that it would not be possible for it to file a CEI plan, and for the Commission to seek public comment, and issue an order prior to the September 30, 1990 closing date. AT&T estimates that it will take approximately six months from the closing date to acquire the information that will be necessary to offer Western Union's services in full compliance with the *Computer III* requirements, or to seek other appropriate relief.[8] AT&T further states that public interest considerations require that its acquisition of the Western Union assets not be deferred, since Western Union is confronting a liquidity crisis.[9] AT&T states that if the requested waiver is not granted, Western Union's enhanced service customers will face discontinuation of their present service arrangements.[10]

III. POSITIONS OF THE PARTIES

5. Comments were filed by Graphnet, Inc. (Graphnet), TRT/FTC Communications, Inc. (TRT), and the U.S. Sprint Communications Company Limited Partnership (Sprint). Graphnet and TRT state that a *Computer III* waiver should not be granted until the Commission has reviewed public comments on, and adjudicated, AT&T's Section 214 applications for its acquisition of Western Union's assets.[11] TRT states that if the Commission grants AT&T's applications, AT&T should be permitted sufficient time to file CEI plans, but argues that thirty days should be sufficient.

6. Sprint argues that AT&T's petition should be denied because the potential disruption of service to Western Union's customers only arises as a result of AT&T's and Western Union's decision to set a September 30 closing date for the transfer of those assets, and AT&T waited more than six weeks after entering into the agreement before seeking a waiver.[12] Sprint contends that if AT&T had filed its CEI waiver request promptly after entering into its contract with Western Union, Commission action on AT&T's request could have occurred prior to September 30. Sprint argues that it is implausible that AT&T agreed to acquire Western Union's assets without having ascertained the information it needs to comply with the *Computer III* requirements.[13]

7. Sprint also states that AT&T's contention that it must offer X.25 to X.25 services pursuant to tariff is unsupported.[14] Moreover, Sprint contends, the Commission should not permit AT&T to "bifurcate" Western Union's services into enhanced and basic services. Sprint argues that such a bifurcation is anticompetitive because it permits AT&T to impute interoffice transport costs to the "basic" X.25 service at embedded cost, rather than at the tariffed rates.[15] Sprint contends that such a result contravenes the general requirement that a provider of enhanced services, using its own basic services facilities, must acquire transmission capacity on the same prices,

terms, and conditions that are contained in its tariffs.[16] Sprint also argues that AT&T's petition should not form the basis for upsetting the regulatory treatment that has otherwise been accorded providers of packet-switched data services that also engage in protocol conversion.[17]

8. In its reply comments, AT&T contends that it has shown good cause for a waiver since AT&T will need sufficient time to acquire the information necessary to make the requisite *Computer III* filings, and without a waiver, service to Western Union's customers would be disrupted.[18] With respect to Graphnet and TRT's contention that consideration of this petition should be deferred until the Commission has ruled on AT&T's facilities applications under Section 214 of the Communications Act, AT&T states that the issues in waiver proceedings are distinct from those in applications, and that the waiver can be acted on separately. In response to TRT's argument that a thirty day waiver would be sufficient, AT&T argues that it will need up to six months to assemble and analyze the relevant data, and file tariffs and CEI plans.

9. AT&T contends that there is no merit in Sprint's allegation that the petition should be denied because the potential disruption to Western Union's customers only arises as a consequence of AT&T and Western Union's decision to choose September 30 as a closing date. AT&T states that the September 30 date is required because Western Union is facing a liquidity crisis.[19] AT&T states that it prepared and filed its petition for waiver as soon as possible after obtaining documentation that described the basic nature of the packet services that Western Union was providing to its customers.

10. AT&T also takes issue with Sprint's contention that AT&T should not be permitted to divide Western Union's enhanced services into basic service and enhanced service components. AT&T states that bifurcation is required by the Commission's rules.[20] With respect to Sprint's argument that the basic services should be provided at tariff rates, AT&T states that Sprint's argument has been previously rejected by the Commission.[21] Finally, AT&T states that Sprint's concern about the possible regulatory spill-over of its petition is not well founded since AT&T seeks only limited, temporary relief from the *Computer III* requirements that are currently applicable only to AT&T.[22]

IV. DISCUSSION

11. We conclude that AT&T has demonstrated unique circumstances warranting a temporary, limited waiver of the *Computer III* rules. The waiver is of brief duration and applies to services provided to a small set of customers of a company that is experiencing financial distress. Moreover, the purpose of the waiver is to permit AT&T to comply with the *Computer III* requirements without a disruption in service. We conclude that this narrow waiver will not undermine the Commission's *Computer III* policy and will serve the public interest by avoiding the disruption, inconvenience, and potential reduction in safety of property and life that could result from a cessation of service to Western Union's customers.[23]

12. It appears that Western Union confronts an acute financial crisis[24] and that if Western Union does not receive an adequate infusion of cash it will be forced to cease operations and discontinue service to its customers.[25] It was thus unlikely that the September 30 closing date could have been delayed to afford AT&T sufficient time to acquire the information that would be necessary for AT&T to comply, at the moment of acquisition, with the Commission's *Computer III* requirements. In addition, we conclude that AT&T has adequately justified the need for a six-month waiver, effective on the closing of the transaction, to bring itself into compliance with *Computer III*. It appears unlikely that AT&T could obtain the information necessary to file CEI plans, in thirty days.[26] We believe, however, that four months should be sufficient to permit AT&T to obtain the necessary information, and we therefore require AT&T to file any necessary CEI plans 120 days after the closing of the transaction.

13. The other issues raised by Sprint go to the eventual approval of AT&T's CEI plans and tariffs, rather than the waiver request.[27] AT&T has stated its intention to file CEI plans for services that will be provided through the use of the acquired assets. Any *Computer III* compliance issues should be addressed in future proceedings, and Sprint is free to reiterate its arguments with respect to bifurcation, tariff, and cost issues in those proceedings.

V. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED that AT&T is granted a six-month waiver of the Commission's *Computer III* requirements, effective upon the closing of the transaction.

15. IT IS FURTHER ORDERED that AT&T shall file any necessary CEI plans for Western Union's enhanced services not later than 120 days after the closing of the transaction.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Agreement of Purchase and Sale Between Western Union Corporation and American Telephone and Telegraph Company, dated July 3, 1990, filed on August 15, 1990 as an Attachment to AT&T's Application under Sections 214 and 314 of the Communications Act. The purchased assets are described more fully in the purchase agreement. Originally, the closing date was September 30, 1990. The closing of this transaction has since been postponed to not earlier than October 15, 1990. Letter from Robert L. Dughi, AT&T, to Secretary, FCC, dated September 27, 1990.

[2] Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, Report and Order, 104 FCC 2d 958 (1986)(*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987)(*Phase I Reconsideration Order*), *further recon.*, 3 FCC Rcd 1135 (1988)(*Phase I Further Reconsideration*), *second further recon.*, 4 FCC Rcd 5927 (1989)(*Phase I Second Further Reconsideration*), *Phase I Order* and *Phase I Reconsideration Order vacated sub. nom. People of California v. FCC*, 905 F.2d 1217 (9th Cir. 1990), *appeal pending sub nom. Illinois Bell Telephone Co. v. FCC*, No. 88-1364 (D.C. Cir. pet. for rev. filed May 16, 1988); *Phase II Order*, CC Docket No. 85-229, Phase II, 2

FCC Rcd 3072 (1987), *recon.*, 3 FCC Rcd 1150 (1988)(*Phase II Reconsideration Order), further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration), Phase II Order vacated sub nom. California v. FCC*, 905 F.2d 1217 (9th Cir. 1990), *appeal pending sub nom. California v. FCC*, No. 88-7183 (9th Cir. filed May 13, 1988).

In California v. FCC, the court decided to vacate the *Phase I Order*, the *Phase I Reconsideration*, and the *Phase II Order* in the Third Computer Inquiry. The vacation of the *Computer III* orders will generally return the industry and the Commission to a *Computer II* regime once the Ninth Circuit issues its mandate. In the *Computer III Remand Proceedings*, the Commission proposed to permit AT&T to provide collocated enhanced services on an integrated basis pursuant to the nonstructural safeguards adopted in *Computer III. Computer III Remand Proceedings*, Notice of Proposed Rule Making, CC Docket No. 90-368, FCC 90-283 (released Aug. 6, 1990). The Commission also granted AT&T an interim waiver of the *Computer II* rules, effective when the Ninth Circuit mandate issues in *California*. If the mandate issues before the Commission makes a decision in the *Computer III Remand Proceedings* regarding the conditions under which AT&T can offer enhanced services, the interim waiver will permit AT&T to continue offering enhanced services on an integrated basis, provided that AT&T complies with the *Computer III* safeguards. *Id.* Therefore, the *Computer III* waiver we grant today will permit AT&T to continue offering services to Western Union customers under the *Computer III* regime in effect today or under the *Computer II* waiver for AT&T that will be in effect once the mandate issues.

[3] AT&T Petition for Limited Interim Waiver on Expedited Basis of the Third Computer Inquiry's Requirements (Aug. 17, 1990)(Petition) at 1.

[4] Petition at 2-3.

[5] *Id.* at 3. AT&T states that if Western Union's packet services do include basic services, AT&T will file a request for special permission to incorporate the individual rates, terms, and conditions for such services in a "transition tariff" that would be in effect during the same six-month period covered by this petition for interim waiver. *Id.*

[6] *Id.*

[7] *Id.* at 6.

[8] *Id.* at 7.

[9] *Id.* at 8. AT&T states that Western Union's capitalization plan for addressing its liquidity problems is based, in part, upon using the proceeds from AT&T 's acquisition of Western Union's assets. *Id.*

[10] *Id.* at 9.

[11] *See* File Nos. W-P-C-6622 and I-T-C-90-163.

[12] Sprint Comments at 4-5.

[13] *Id.* at 5.

[14] *Id.* at 5-6.

[15] *Id.* at 6.

[16] *Id.* at 8-9, citing *Computer II Final Decision*, 77 FCC 2d 384 at 475 (1980).

[17] Sprint cites a Commission decision that permitted packet-switched data services providers to engage in protocol conversion, and provide packet-switching and protocol conversion as an "enhanced" service. *Id.* at 9-10, citing *Second Computer Inquiry*, 79 FCC 2d 953, at 958 (1980).

[18] AT&T Reply at 2-3.

[19] *Id.* at 5.

[20] *Id.* at 6-7. AT&T states that it would prefer that it not be subject to a bifurcation requirement, and that bifurcation "inhibits competition to the detriment of consumers and should be lifted." *Id.* at 7, citing AT&T Comments (July 3, 1990) in CC Docket No. 90-132. Consistent with that view, AT&T seeks, in its waiver petition, to offer Western Union customers services on a non-bifurcated basis during the period that the requested waiver would be in effect.

[21] *Id.* citing AT&T CEI Protocol Conversion and Storage Services with Packet Switching Services, Memorandum Opinion and Order, 5 FCC Rcd 651 (Com. Car. Bur. 1990)).

[22] *Id.* at 8.

[23] Our decision to grant a waiver of the *Computer III* requirements in this context does not, directly or indirectly, implicate the separate issues raised in AT&T's facilities transfer applications. *See* File Nos. W-P-C-6622 and I-T-C-90-163.

[24] *See* Affidavit of John C. Walters, Western Union Senior Vice President, dated August 6, 1990, appended to AT&T's Application under Section 214 and 314 of the Communications Act for authority to acquire certain lines of Western Union Corporation (W-P-C-6622).

[25] According to the Reuters News Service (Sept. 5, 1990 at 08:36), Western Union stated that it was in default on two notes and approximately $41 million of subordinated debentures, which permitted creditors to request accelerated payment of approximately $572 million in debt. According to Reuters, if "acceleration occurred, Western Union said it would be unable to repay the debt and would have to file for bankruptcy protection. Western Union said a bankruptcy filing would likely cause the termination of its agreement to sell most of its Business Services unit to the American Telephone and Telegraph Company."

[26] AT&T has stated that it will make every effort to comply with the *Computer III* requirements before the end of the six month period requested in the petition. *See* AT&T Reply at 5, n.*.

[27] AT&T has stated its intention to request special permission to file a "transition tariff" for any basic services. A request for special permission is not a *Computer III* issue, but a tariffing issue, and is therefore not addressed in this order.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-447

In the Matter of

Amendment of Section 73.202(b), RM-7351
Table of Allotments,
FM Broadcast Stations.
(Bowling Green, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 24, 1990; Released: October 19, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Bowling Green Broadcasters, Inc. (petitioner), licensee of Station WCBZ(FM), Channel 244A, Bowling Green, Kentucky, seeking the substitution of Channel 244C3 for Channel 244A at Bowling Green, and the modification of its licensee to specify operation on the higher class co-channel.[1] Petitioner states that it will apply for the channel, if allotted.

2. Channel 244C3 can be substituted for Channel 244A at Bowling Green, Kentucky, in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.6 kilometers (9.7 miles) southwest of the community.[2] The restriction is necessary in order to avoid a short-spacing to Station WOKH(FM), Channel 244A, Bardstown, Kentucky.

3. As requested, we shall propose to modify the license of Station WCBZ(FM) at Bowling Green, Kentucky, to specify operation on Channel 244C3. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional equivalent channel at Bowling Green.

4. In view of the fact that Bowling Green could receive its first wide coverage area FM channel, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Bowling Green, Kentucky	244A, 252A	244C3, 252A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **December 10, 1990,** and reply comments on or before **Decembe 26, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Jeffrey W. Malickson
P.O. Box 32488
Charlotte, North Carolina 28232
(Attorney for Bowling Green
Broadcasters, Inc.)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Petitioner is also the licensee of Station WLBJ(AM), Bowling Green, Kentucky.

[2] The coordinates for Channel 244C3 are North Latitude 36-53-00 and West Longitude 86-34-20.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-122

In the Matter of

Amendment of Section 73.202(b), RM-7075
Table of Allotments,
FM Broadcast Stations.
(Coeburn, Virginia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 1990; Released: October 19, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 1608 (1990), issued in response to a petition filed by Preston L. Salyer (petitioner), proposing the substitution of FM Channel 259C3 for Channel 259A at Coeburn, Virginia. Petitioner also requested modification of his construction permit for Station WZQK(FM) to specify operation on the new channel. Petitioner filed supporting comments in which he reaffirmed his interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 259C3 for Channel 259A at Coeburn, Virginia, since it could provide the community with its first wide coverage FM station. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at petitioner's proposed site.[1] In addition, we are modifying the petitioner's construction permit for Station WZQK(FM), Coeburn, Virginia, to specify operation on Channel 259C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 3, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Coeburn, Virginia	259C3

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station WZQK(FM), Coeburn, Virginia, IS MODIFIED to specify operation on Channel 259C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 259C3 at Coeburn are 37-02-56 and 82-37-35. Because this allotment is made as a result of a petition for rule making filed prior to October 2, 1989, the permittee may avail himself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-448

In the Matter of

Amendment of Section 73.202(b), RM-7427
Table of Allotments,
FM Broadcast Stations.
(Nome, Alaska)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 27, 1990; Released: October 19, 1990

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed on behalf of the Catholic Bishop of Northern Alaska (petitioner) seeking the allotment of FM Channel 241A to Nome, Alaska, as that community's second local FM service. Petitioner stated an intention to apply for the channel, if allotted.

2. A staff engineering review of petitioner's proposal has determined that Channel 241A can be allotted to Nome in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, without the imposition of a site restriction.[1]

3. We believe the public interest would be served by proposing the allotment of Channel 241A to Nome, Alaska, since an interest has been expressed in providing the community with an additional local FM service. Accordingly, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Nome, as follows:

	Channel No.	
City	Present	Proposed
Nome, Alaska	262A	241A, 262A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **December 10, 1990,** and reply comments on or before **December 26, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Leon T. Knauer, Esq.
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It

should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates used for Channel 241A at Nome are 64-30-00 and 165-25-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-102

In the Matter of

Amendment of Section 73.202(b), RM-7127
Table of Allotments,
FM Broadcast Stations.
(Lake Village, Arkansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 27, 1990; Released: October 19, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 5 FCC Rcd 1578 (1990), issued in response to a petition filed by Edna Fay Stone (petitioner), proposing the allotment of Channel 278A to Lake Village, Arkansas, as that community's second local FM broadcast service.[1] Petitioner filed supporting comments in response to the *Notice*. No other comments were received.

2. We believe the public interest would be served by allotting Channel 278A to Lake Village, since it could provide a second local FM broadcast service to the community.

3. As indicated in the *Notice*, Channel 278A can be allotted to Lake Village consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter is located at least 4.4 kilometers (2.7 miles) southeast of the community.[2]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 3, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Lake Village, Arkansas	240A, 278A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications on Channel 278A at Lake Village, Arkansas, will open on **December 4, 1990,** and close on **January 3, 1991.**

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Although petitioner requested the allotment of Channel 299A to Lake Village, the Commission proposed Channel 278A to avoid a conflict with a separate proposal to change the community of license for Station WZRI(FM), Channel 295A, from Cleveland to Rosedale, Mississippi, substitute Channel 298C2 for Channel 295A, and modify the permit for Station WZRI(FM) accordingly. *See* MM Docket No. 89-415.

[2] Coordinates used for Channel 278A at Lake Village are 33-18-08 and 91-15-18. The site restriction is required to avoid a short-spacing to the licensed facilities of Station KXSA-FM, Channel 276A, Dermott, Arkansas, at coordinates 33-31-32 and 91-27-20.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-449

In the Matter of

Amendment of Section 73.202(b), RM-7430
Table of Allotments,
FM Broadcast Stations.
(Morro Bay, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 27, 1990; Released: October 19, 1990

By the Deputy Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Don Stewart (petitioner) seeking the allotment of FM Channel 231A to Morro Bay, California, as that community's second local FM service. Petitioner stated his intention to apply for the channel, if allotted.

2. A staff engineering review of petitioner's proposal has determined that Channel 231A can be allotted to Morro Bay in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, without the imposition of a site restriction.[1]

3. We believe the public interest would be served by proposing the allotment of Channel 231A to Morro Bay, California, since an interest has been expressed in providing the community with an additional local FM service. Accordingly, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Morro Bay, as follows:

	Channel No.	
City	Present	Proposed
Morro Bay, California	259A	231A,259A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **December 10, 1990,** and reply comments on or before **December 26, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Don Stewart
c/o William L. Zawila, Esq.
12550 Brookhurst Street, Suite A
Garden Grove, CA 92640

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It

should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates used for Channel 231A at Morro Bay are 35-21-48 and 120-50-42.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-450

In the Matter of

Amendment of Section 73.202(b),	RM-7391
Table of Allotments,	
FM Broadcast Stations.	
(Winterset, Iowa)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 27, 1990; Released: October 19, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by AFM Associates (petitioner) requesting the substitution of Channel 258C3 for Channel 258A at Winterset, Iowa, and the modification of its construction permit for Station KTDG(FM) to specify operation on the higher powered channel. Petitioner states that it will apply for the channel, if allotted.

2. Channel 258C3 can be allotted to Winterset in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.7 kilometers (8.5 miles) south of the community to avoid a short-spacing to Station KFGQ-FM, Channel 257A, Boone, Iowa, and to the outstanding construction permit for Channel 258A at Eldora, Iowa.[1] As requested, we also propose to modify petitioner's construction permit for Station KTDG(FM) to specify operation on Channel 258C3. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 258C3 at Winterset or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. We believe the public interest would be served by proposing the substitution of Channel 258C3 for Channel 258A at Winterset, Iowa, since it could enable Station KTDG(FM) to expand its coverage area. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Winterset, Iowa	258A	258C3

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **December 10, 1990,** and reply comments on or before **December 26, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Robert S. Stone, Esq.
McCampbell & Young
2021 Plaza Tower
P.O. Box 550
Knoxville, Tennessee 37901-0550
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202 (b), 73.504 and 73.606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 258C3 at Winterset are North Latitude 41-12-34 and West Longitude 94-02-09.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-1
Phase II

In the Matter of

GTE Service Corporation
Annual 1988 Access Tariff Filing

ORDER

Adopted: October 12, 1990; Released: October 15, 1990

By the Chief, Common Carrier Bureau:

1. On September 20, 1990, GTE Service Corporation and its affiliated domestic telephone operating companies (GTOC) requested an additional extension of time for refund requirements ordered by the Commission in regard to the Annual 1988 Access Tariff filings.[1] GTOC seeks to stay payment of the refunds until Commission reconsideration and judicial review of the matter are completed.

2. By the December 1988, April 1989, and March 1990 Orders, the Commission required GTOC to refund over $8 million for disallowances found in review of GTOC's 1988 annual access tariff.[2] In the *December 1988 Order*, the Commission concluded that GTOC and other local exchange carriers had developed certain special access and local transport revenue requirements incorrectly, and ordered those companies to file either refund payment plans or revisions to their 1988 access tariffs. In the *April 1988 Order*, the Commission ordered GTOC to refund $7.347 million. In March 1990, the Commission ordered GTOC to make refunds totalling approximately $1.01 million to interstate customers on the basis of each customer's share of 1988 local transport payments.

3. GTOC sought judicial review of the *December 1988 Order* and the *April 1989 Order* [3] and later requested Commission reconsideration of the *March 1990 Order*.[4] On June 20, 1990, the U.S. Court of Appeals for the District of Columbia granted the Commission's motion to hold in abeyance the Court's review of the case until the Commission acts on the petition for reconsideration. Petition at 2.

4. In September 1989, the Commission granted GTOC's motion to stay payment of $7.347 million in refunds they were ordered to pay in the *April 1989 Order*. The stay was allowed until October 16, 1990.[5] In April 1990, the Commission stayed until May 4, 1991 GTOC's refund of the $1.01 million in overcharges.[6] GTOC now requests a further extension of time for both refunds until the matter is finally resolved, either by the Commission or by the Court. Petition at 3.

5. GTOC notes that the Bureau has previously concluded that it was in the public interest to delay the effective date of the refunds that GTOC is required to make while this matter is under review. Petition at 2, quoting 5 FCC Rcd at 2885. Petitioner asserts that since the matter is still pending review at the Commission and since nothing else has changed, a further extension would similarly serve the public interest. *Id.* at 3. GTOC suggests that for administrative ease, the Commission should also extend the May 14, 1991 deadline for refund of the $1.01 million. *Id.* at 3.

6. The Bureau has reviewed GTOC's motion and concludes that it is in the public interest to delay the October 16, 1990 effective date of the approximately $7 million in refunds GTOC is required to make while this matter is under review. Waiver of payments due on October 16 should be granted for six months, or until the reconsideration proceeding is completed by the Commission, whichever occurs first. This decision to grant GTOC an extension of time, however, should in no way affect any of the conclusions the Commission reached in the *April 1989 Order* or in the *September 1989 Order*. Extension of the refund deadline for $1.1 million promulgated in the *April 1990 Order* will be denied inasmuch as that refund is not scheduled to be made until May 14, 1991.

7. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. §154(i), GTE Service Corporation and its affiliated domestic telephone operating companies ARE GRANTED an extension of time until April 16, 1991, or until the reconsideration is decided by the Commission, whichever is earlier, to make refunds of $7.34 million in overcharges as required by the *April 1989 Order*. Grant of this extension is contingent upon GTOC's continuing compliance with the conditions set forth in the *September 1989 Order*.

8. IT IS FURTHER ORDERED that the motion of GTE Service Corporation and its affiliated domestic telephone operating companies to extend the May 14, 1991 refund deadline, promulgated in the *April 1990 Order*, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, 4 FCC Rcd 4115(1988)(*December 1988 Order), recon.*, 4 FCC Rcd 3965 (1989) (*April 1989 Order*), Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, 5 FCC Rcd 2150 (1990) *(March 1990 Order)*.

[2] *Id.*

[3] Southern Bell Telephone Co. *et al.* v. FCC, No.88-1081 (D.C.Cir. filed Feb. 2, 1989).

[4] GTOC Petition for Reconsideration, filed Apr. 30, 1990.

[5] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, 4 FCC Rcd 7594 (1989) *(September 1989 Order)*.

[6] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, 5 FCC Rcd 2885 (1990) *(April 1990 Order)*.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE
Released: October 16, 1990

CINCINNATI BELL FILES PETITION FOR WAIVER REGARDING ELECTRONIC DIRECTORY ASSISTANCE SERVICE

Pleading Cycle Established

On September 28, 1990, the Cincinnati Bell Telephone Company (Cincinnati Bell) filed a petition for waiver of Part 69 of the Commission's Rules to establish new Switched Access rate elements for proposed Electronic Directory Assistance (EDA) service. This service would permit Cincinnati Bell customers to access electronic directory listings without operator interaction or reference to printed telephone directories.

Interested parties may file comments regarding the Cincinnati Bell waiver petition no later than **October 29, 1990.** Reply comments may be filed no later than **November 9, 1990.**

An original and four copies of all comments and replies must be filed with the Secretary of the Commission in accordance with Section 1.51(c) of the Commission's Rules. Parties must also furnish one copy of their comments and replies to International Transcription Service, Inc. (ITS), the Commission's duplicating contractor, at its office in Room 246, 1919 M Street, N.W., Washington D.C. 20554, and one copy to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of Cincinnati Bell's waiver petition, along with other related documents, may be obtained from ITS. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N.W.

For further information, contact Steven M. Spaeth, Tariff Division, Common Carrier Bureau, at (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-379

In the Matter of

Amendment of Section 73.202(b), RM-5429
Table of Allotments,
FM Broadcast Stations.
(Frankfort, Kentucky)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: September 28, 1990; Released: October 19, 1990

By the Chief, Policy and Rules Division:

1. The Commission has before it a petition for reconsideration filed by First Radio, Inc., licensee of Station WSEK(FM), Somerset, Kentucky, of the *Report and Order*, 2 FCC Rcd 7439 (1987), allotting Channel 279A to Frankfort, Kentucky. Allan Communications Incorporated, petitioner for the Frankfort allotment, filed an opposition and First Radio filed a reply.

2. First Radio had opposed Allan's proposal, arguing that the allotment of Channel 279A to Frankfort would conflict with its counterproposal in MM Docket 86-236 to substitute Channel 241C2 for Channel 244A at Somerset, to modify the authorization of Station WSEK(FM) accordingly, and to substitute Channel 279A for Channel 240A at Stanford, Kentucky, to accommodate the Somerset upgrade.[1] First Radio argued that Channel 256A could be allotted to Frankfort with an 11 kilometer (6.8 mile) site restriction, thereby removing the conflict between the Stanford and Frankfort proposals. The *Report and Order* rejected First Radio's suggestion to allot Channel 256A, and instead allotted Channel 279A, to Frankfort, noting that First Radio filed a separate petition (RM-5682) to substitute Channel 246C2 for Channel 244A at Somerset. This proposal would not conflict with the Frankfort proposal.

3. In its petition for reconsideration, First Radio argues that the Commission should not adopt a channel precluding its proposal to substitute Channel 241C2 for Channel 244A at Somerset on the basis that First Radio filed an alternative proposal for a Class C2 channel substitution. First Radio states that if its petition to substitute Channel 246C2 for Channel 244A at Somerset had been adopted, the Commission could treat as moot its proposal to substitute Channel 241C2 for Channel 244A. First Radio requests that the Commission either grant its counterproposal in this proceeding or hold the proceeding in abeyance until approval of its proposal to substitute Channel 246C2 for Channel 244A at Somerset.

4. The Commission granted First Radio's petition to substitute Channel 246C2 for Channel 244A at Somerset, and to modify its authorization for Station WSEK(FM) accordingly, in MM Docket No. 88-31. *See Report and Order*, 4 FCC Rcd 3441 (Pol. and Rules Div. 1988), *aff'd in relevant part*, 5 FCC Rcd 927 (1990). Therefore, First Radio's petition for reconsideration in this proceeding is moot.

5. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by First Radio, Inc., IS HEREBY DISMISSED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding contact Michael Ruger, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The *Report and Order* in MM Docket No. 86-236 stated that First Radio's counterproposal would be considered separately. *See* 2 FCC Rcd 3589 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ALLNET COMMUNICATION
SERVICES, INC.,
Complainant,

v. File No. E-90-158

THE SOUTHWESTERN BELL TELEPHONE
COMPANY,
Defendant.

ORDER

Adopted: October 11, 1990; Released: October 19, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On March 6, 1990, Allnet Communication Services, Inc., filed a formal complaint against the Southwestern Bell Telephone Company. The complaint concerned the tariffed arrangements for Southwestern Bell's special construction of interstate communications facilities for Allnet. Allnet alleged that the maximum termination liability periods and charges and the annual underutilization liability charges imposed by Southwestern Bell under its special construction tariff violated sections 201 and 202 of the Communications Act of 1934, 47 U.S.C. §§ 201, 202. Allnet also claimed that Southwestern Bell had violated section 211 of the Act, 47 U.S.C. § 211, by failing to file with the Federal Communications Commission contracts covering these special construction arrangements.

2. The parties conducted discussions aimed at resolving this complaint. On August 30, 1990, the parties filed a joint Stipulation for Dismissal, stating that "all claims . . . have been compromised and settled by and between the parties" and moving that all causes of action in Allnet's complaint be dismissed with prejudice. Because a controversy between the parties no longer exists, we find that it is in the public interest to grant the parties' motion.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the joint motion to dismiss filed by the complainant and the defendant on August 30, 1990, IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

WORLD WIDE COMMUNICATIONS LIMITED PARTNERSHIP — File No. I-T-C-90-138

Application for authority to operate as an international resale carrier.

INTERNATIONAL PACIFIC d/b/a INTERNATIONAL PACIFIC OPERATOR SERVICES — File No. I-T-C-90-139

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: October 15, 1990; Released: October 19, 1990

By the Chief, International Facilities Division:

1. The above-captioned applications filed on June 26 and 27, 1990 by World Wide Communications Limited Partnership (World Wide) and International Pacific d/b/a International Pacific Operator Services (IPOS), respectively, request authority pursuant to Section 214 of the communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice service between the U.S. and various overseas points. The applications were placed on public notice on July 3, 1990. No comments were received.

2. World Wide is a start-up company and IPOS is a communications carrier providing domestic resale service. Both propose to resell international switched voice services in competition with other common carriers already providing resale of such services. In authorizations of new entrants over the past decade, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by World Wide and IPOS.

4. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-90-138 and I-T-C-90-139 ARE GRANTED, and

a. World Wide is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and the points listed in those tariffs;

b. IPOS is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2 between the US and the points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicants and their correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1989).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See, e.g.*, the cases cited in the Teltec Saving Communications Co., File No. I-T-C-86-062, Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: October 19, 1990

Report No. DS-1015

Digital Audio Radio Service Satellite System
Application Tendered for Filing

Satellite CD Radio, Inc.	**File Nos. 49/50-DSS-P/LA-90** **58/59-DSS-AMEND-90**

Satellite CD Radio, Inc. has tendered for filing an application to construct, launch and operate a digital audio radio service satellite system consisting of the following: two 6000-watt geostationary satellites, an undetermined number of urban-area terrestrial repeaters, an earth station for feeder links and for telemetry, telecommand and control, terrestrial links for delivery of programming to the feeder link earth station and numerous individual radio receivers. The system is intended to provide CD quality radio service throughout the U.S. CD Radio proposes to transmit radio programming from up to 66 radio stations via land-lines to the feeder link station where it will be uplinked to the space station using the 30 GHz frequency band. The signals will be downlinked to the individual receivers using the 1470-1530 MHz frequency bands. At the same time the feeder link station is transmitting programming to the satellites, it will send the same programming to a network of ground repeaters in urban areas. Individual radio receivers will automatically select the stronger signal -- satellite or terrestrial -- carrying the same programming. CD Radio proposes to offer its service on a non-common carrier basis by selling transponders to both terrestrial broadcasters and non-broadcasters providing subscription or pay-per-listen services. This application has not yet been accepted for filing.

CD Radio has also filed a Petition for Rule Making (*See* RM-7400) to allocate, on a primary basis, the 1470-1530 MHz frequencies it proposes to use to downlink its programming. In addition, the Commission has released a Notice of Inquiry, (*Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Services,* FCC 90-281 (released August 21, 1990)), seeking comment on the development and implementation of new digital radio services in general. Action on CD Radio's application will be affected by the disposition of its Petition for Rule Making as well as any action taken in connection with the Notice of Inquiry.

Comments or petitions regarding CD Radio's application may be filed on or before **November 30, 1990.** Replies and oppositions may be filed on or before **December 14, 1990.** Copies of this application are available for public inspection in Room 6220, 2025 M Street N.W., Washington, D.C. 20554. The application listed is subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules and regulations or other requirements.

For further information, contact Rosalee Chiara at (202) 634-1624.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

MEGA BROADCASTING CORP. — File No. BR-890406UF (DISMISSED HEREIN)

For Renewal of License of Station
WRPZ(AM)
Paris, Kentucky

and

SOMERSET EDUCATIONAL BROADCASTING FOUNDATION — File No. BP-890621AH

For a Construction Permit for a
New Standard Broadcast Station
on 1440 Khz
Paris, Kentucky

MEMORANDUM OPINION AND ORDER

Adopted: October 16, 1990; Released: October 19, 1990

By Chief, Audio Services Division, Mass Media Bureau:

1. The Commission, by the Chief, Audio Services Division, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration: (a) the application of Mega Broadcasting Corp. ("Mega") for renewal of license of Station WRPZ(AM), Paris, Kentucky; and (b) the application of Somerset Educational Broadcasting Foundation ("Somerset") for a construction permit for a new standard broadcast station on 1440 Khz at Paris, Kentucky. The two applications are mutually exclusive because Somerset proposes to operate on the frequency previously licensed to Mega.

2. By *Order of Revocation* released August 22, 1990, DA 90-1097, the Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, revoked the license of Station WRPZ(AM). That action having become final, the renewal of WRPZ(AM) is now moot. Thus, Mega's above-captioned renewal aplication will be dismissed.

3. Somerset's application was properly accepted for filing, because it was mutually exclusive with Mega's renewal application. In accordance with the Commission's directives in this regard, it was routinely processed. *See Order* 5 FCC Rcd 2136 (1990); *See also Public Notice*, 1 FCC Rcd 1264 (1986). Somerset has been found fully qualified to be a Commission licensee. Thus, there is no impediment to grant of its application.

4. Accordingly, IT IS ORDERED that Mega's application for renewal of license (BR-890406UF) IS DISMISSED.

5. IT IS FURTHER ORDERED that the application of Somerset Educational Broadcasting Foundation for a construction permit for a new standard broadcast station on 1440 Khz at Paris, Kentucky (BP-890621AH) is hereby GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads
Chief, Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

EASTERN TELEPHONE SYSTEMS, INC. File No. I-T-C-90-130

Application for authority to operate as an international resale carrier

SOUTHNET CORP. File No. I-T-C-90-132

Application for authority to operate as an international resale carrier

AFFINITY NETWORK, INC. File No. I-T-C-90-136

Application for authority to operate as an international resale carrier

KLP INC. d/b/a CALL AMERICA File No. I-T-C-90-137

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: October 15, 1990; Released: October 19, 1990

By the Chief, International Facilities Division:

1. The above-captioned applications filed by Eastern Telephone Systems, Inc. (ETS), Southnet, Corp. (Southnet), Affinity Network, Inc. (Affinity) and KLP Inc. d/b/a Call America (CMA), request authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice services between the U.S. and various international points. The applications were placed on public notice on June 20 and 27, 1990. No comments were filed.

2. ETS, Southnet and Affinity are non-dominant domestic resale common carriers. CMA is a start-up company. All four applicants propose to resell international switched voice services in competition with other common carriers already providing resale of such services. In authorizations of new entrants over the past decade, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by ETS, Southnet, Affinity and CMA.

4. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-90-130, I-T-C-90-132, I-T-C-90-136 and I-T-C-90-137 ARE GRANTED; and

a. ETS and CMA are authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2 between the United States and the points listed in those tariffs;

b. Southnet is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariff F.C.C. No. 1, MCI's Tariff F.C.C. No. 1 and Communications Services Inc.'s Tariff F.C.C. No. 2 between the U.S. and the points listed in those tariffs; and

c. Affinity is autorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2 between the U.S. and the points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicants and their correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1989).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See, e.g.*, the cases cited in the Teltec Saving Communications Co., File No. I-T-C-86-062, Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-436

In re Application of

BIG COUNTRY COMMUNICATIONS (Assignor) File No. 23678-CD-P/L-01-86

and

PASS WORD, INC. (Assignee)

For consent to the partial assignment of the license of Public Land Mobile Service Station KPD783, on 35.50 MHz at Sandpoint, Idaho

HEARING DESIGNATION ORDER

Adopted: September 24, 1990; Released: October 19, 1990

By the Chief, Common Carrier Bureau:

I. BACKGROUND AND CONTENTIONS

1. Pass Word, Inc. (Pass Word) has filed the referenced application to obtain Commission approval to purchase a paging facility in the Public Land Mobile Service (PLMS) from Big Country Communications, the current licensee. Rodney J. Bacon is the President and 49.5 percent owner of Pass Word. His mother, Phyllis D. Bacon, owns 50.5 percent of Pass Word. As a result of revocation proceedings held in the late 1970's, the Commission revoked all of the licenses held by Pass Word and its affiliate Coeur D'Alene Answering Service (Coeur d'Alene), which was wholly-owned by Rodney J. Bacon. *Pass Word, Inc.*, 76 F.C.C.2d 465 (1980), *recon. denied*, 86 F.C.C.2d 437 (1981), *affirmed sub nom. Pass Word, Inc. v. FCC*, 673 F.2d 1363 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 840 (1982). Courtesy Communications, Inc.(Courtesy), which states that it is the licensee of PLMS stations which serve the same general area which will be served by Pass Word, has filed a petition to dismiss or deny the captioned application. Pass Word has filed an opposition to that petition and Courtesy has filed a reply.

2. In *Pass Word, Inc.*, the Commission found that Mr. Bacon deliberately built and began operation of four 454 MHz channels licensed to Pass Word and Coeur d'Alene long after the time allowed for construction had expired. Further, the Commission found that Mr. Bacon repeatedly and deliberately misrepresented and concealed over a three-year period, in forms, correspondence and pleadings filed with the Commission, the fact that he had failed to timely construct and operate those 454 MHz channels in order to:

> . . . . obtain licenses to cover construction of those channels, to obtain permits for the construction of additional channels, and to forestall Commission inquiry into the late construction and operation of the 454 MHz channels and Bacon's responsibility therefor.

76 F.C.C.2d at 518-19. In this light, the Commission held: "The only appropriate remedy for such flagrant, unmitigated disregard of licensee responsibility is revocation." 76 F.C.C.2d at 519.

3. Courtesy observes that the Commission has stated that it must be able to depend on the integrity and representations of its licensees, citing *inter alia*, *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946). Courtesy argues that it is difficult to imagine how a Commission licensee could have created a more serious and extensive breach of the public trust than that created by Pass Word under Bacon's direction. Courtesy contends that Bacon repeatedly lied to the Commission on license applications and in application amendments, and continued his misrepresentations through years of administrative and court proceedings, up through 1982. In light of the foregoing, Courtesy argues that Pass Word's assignment application should be denied. Courtesy also contends that Pass Word's recent performance as a Private Radio licensee providing Specialized Mobile Radio (SMR) service and private microwave relay service is not relevant to Pass Word's qualifications to hold a common carrier authorization. Courtesy claims that common carriers are subject to extensive regulatory supervision and requirements to which private carriers are not subject. In this regard, Courtesy claims that a common carrier is also subject to more stringent character qualifications than those of a licensee who enters into private contractual arrangements to serve customers.

4. Pass Word responds that Courtesy wants the Commission to find that Pass Word is utterly incapable of rehabilitation, premised exclusively on the prior adverse decision in the referenced revocation proceeding. Pass Word claims that as a result of losing its prior common carrier licenses, it has already suffered sufficient punishment for its past transgressions and has been rehabilitated. Further, Pass Word contends that Courtesy has failed to present a single fact to suggest that Pass Word cannot now meet the Commission's licensing standards. Lastly, Pass Word argues that the Commission would be acting in an unlawfully inconsistent manner if, after granting Pass Word licenses for private carrier facilities under Parts 90 and 94 of the Rules, it refused to license Pass Word under Part 22 of the Rules, citing *Melody Music, Inc. v FCC*, 345 F.2d 730, 732 (1965) for the proposition that the Commission may not give disparate treatment to similarly situated applicants.

II. DISCUSSION

5. The Commission has expressed its policies regarding character qualifications of broadcast licensees on many occasions. *See, e.g., Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179 (1986) (*Character Policy Statement I*), *recon. granted in part, denied in part*, 1 FCC Rcd 421 (1986), *appeal dismissed sub*

nom., National Association for Better Broadcasting v. FCC, No. 86-1179 (D.C. Cir. June 11, 1987). The foregoing policy statement was modified recently in *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990) (*Character Policy Statement II*), in which the Commission stated that the following factors will be considered in determining whether a broadcast licensee has been rehabilitated:

> (1) whether the applicant has not been involved in any significant wrongdoing since the alleged misconduct occurred; (2) how much time has elapsed since the misconduct; (3) the applicant's reputation for good character in the community; and (4) meaningful measures taken by the applicant to prevent the future occurrence of misconduct. *RKO General, Inc.*, 5 FCC Rcd 642, 644 (1990).

5 FCC Rcd 3252 at n.4. In addition, *Character Policy Statement II* explains that where previous Commission consideration of the misconduct resulted in the denial of an application, the deterrent impact of the Commission's previous action may provide a basis for concluding that a recurrence of misconduct is unlikely. *Id.*

6. Although not directly applicable to common carriers, the character qualifications standards adopted in the broadcast context are used as guidance in the common carrier area as well. *See, e.g., Western Telecommunications, Inc.*, 3 FCC Rcd 6405, 6406 n.11 (1988) and *A.S.D. Answer Service, Inc.*, 1 FCC Rcd 753 (1986), *modified*, 3 FCC Rcd 4213 (1988), *appeal aff'd sub nom. Mobilfone of Northeastern Pennsylvania, Inc. v.* FCC, No. 85-1773 et al. (D.C. Cir. Nov.29, 1989), *petition for rehearing denied*, March 6, 1990. Despite the differences between radio common carriers and broadcasters, we believe that the factors concerning rehabilitation which were listed in *Character Policy Statement II* are relevant to our consideration here as to whether Pass Word is qualified to be a common carrier licensee. *See* paragraph 5, *supra*. In this regard, it does not appear that Pass Word or its President, Mr. Bacon, has been involved in any wrongdoing since the alleged misconduct which was the subject of the referenced revocation proceeding. Further, ten years have passed since the Commission issued its decision in *Pass Word, Inc.* The instant assignment application states that since losing its licenses, Pass Word has been active as an agent/reseller of PLMS and private radio communications service and has continued its Spokane-based telephone answering service. For the past five years, Pass Word has been providing private microwave relay service and Specialized Mobile Radio (SMR) service on Stations WNEJ970 (Coeur d'Alene, Idaho) and WNAS499 (Moscow, Idaho and Spokane, Washington) and Courtesy cites no instance of violations of the Commission's Rules by Pass Word. While we agree with Courtesy that common carriers are subject to more extensive regulatory requirements than private radio carriers, Pass Word's operation of its private radio facilities may predict its ability to be a responsible common carrier licensee. Moreover, the deterrent impact of the Commission's action revoking all of the licenses of Pass Word and Mr. Bacon in 1980 seems to provide a basis for concluding that a recurrence of misconduct is unlikely.

7. Nevertheless, in light of the gravity of Pass Word's past misconduct, we are unable to find, based upon the record before us, that a grant of the instant assignment application would be in the public interest. Specifically, we find that there is insufficient information in the record to enable us to make a determination on the factual question of rehabilitation, as determined by the four factors listed in paragraph 5, *supra*, and the Commission's *Character Policy Statement II*. *See, e.g., L.D.S. Enterprises, Inc.*, 86 F.C.C.2d 283 (1981). Because we cannot make a finding that a grant of the instant assignment application would serve the public interest, convenience and necessity, the application must be designated for hearing, pursuant to Section 309 of the Communications Act. Therein, the parties should submit all available evidence concerning the four factors referenced above.

8. Accordingly, IT IS ORDERED, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned application for partial assignment of PLMS station KPD783, Sandpoint, Idaho, from Big Country Communications to Pass Word, Inc. IS DESIGNATED FOR HEARING upon the following issues:

> (1) To determine in light of the findings in *Pass Word, Inc.*, 76 F.C.C.2d 465 (1980), *recon. denied*, 86 F.C.C.2d 437 (1981), *affirmed sub nom. Pass Word, Inc. v. FCC*, 673 F.2d 1363 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 840 (1982), and the record to be adduced with respect to the conduct of Pass Word, Inc. and Mr. Rodney J. Bacon since the revocation of their PLMS licenses, whether Pass Word, Inc. and its principals possess the requisite qualifications to be a radio common carrier licensee of this Commission.
>
> (2) To determine in light of the matters presented with respect to the foregoing issues, whether grant of the above-captioned assignment application would serve the public interest, convenience and necessity.

9. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau and Courtesy Communications, Inc. are made parties to this proceeding and, pursuant to Section 309(e) of the Communications Act, the burden of proceeding with the introduction of evidence and the burden of proof shall be on Pass Word, Inc.

10. IT IS FURTHER ORDERED that Pass Word, Inc. may avail itself of an opportunity to be heard by filing with the Commission, pursuant to Section 1.221(c) of the Commission's Rules, 47 CFR Section 1.221(c), within 20 days of the mailing of this Designation Order to Pass Word, Inc., a written notice stating its intention to appear for hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

11. IT IS FURTHER ORDERED, that the petition to dismiss or deny filed by Courtesy Communications, Inc. against the captioned assignment application IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-320

In the Matter of

Annual 1990 Access Tariff Filings

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 1990; Released: October 3, 1990

By the Chief, Common Carrier Bureau:

1. In the *1990 Access Tariff Order*,[1] the Common Carrier Bureau (Bureau) used a two-part analysis, consisting of a trend analysis and a cross section analysis, to review the Tier 1 local exchange carriers' (LECs) unseparated costs. The trend analysis of historical unseparated Telephone Plant in Service (TPIS) and Expense Less Depreciation (ELD) identified forecasts that were higher than the historical trend and reduced them, if warranted. The cross section analysis of the disaggregate cost categories that comprise TPIS and ELD compared growth rates of projected costs over historical costs among the 96 Tier 1 company study areas (COSAs), identified anomalously high projections, and reduced them, if warranted. *1990 Access Tariff Order* at para. 197. The Bureau translated the unseparated disallowances produced by these analyses into interstate access disallowances for the Common Line (CL), Switched Traffic Sensitive (TS), and Special Access (SP) categories. *Id.* at para. 241. For various aspects of both analyses, the Bureau stated that it used a 95 percent confidence interval. *Id.* at paras. 205, 206, 221.

2. United Telephone System (United) has filed an application for special permission to file revisions that reflect corrections to the calculations the Bureau used to adjust certain cost and demand forecasts in its companies' 1990 annual access tariff filings. United Application for Special Permission No. 68, filed July 23, 1990. United contends that the confidence intervals actually calculated were higher than 95 percent, thereby resulting in greater disallowances than would otherwise have been made. United maintains that the Bureau incorrectly calculated confidence ranges designed to determine if the LECs' forecasts varied significantly from historical trends. United argues that, as a result of this error, the rate adjustment factors (RAFs) filed by United on June 28, 1990, pursuant to the *1990 Access Tariff Order*, understate interstate revenue requirements by approximately $1.5 million. *Id.* at 1.

3. United claims that the confidence intervals calculated by the Bureau are incorrect because the Bureau included only the "within-sample" error in the calculation of the forecast error variance, when we should have also included the "out-of-sample" error in the calculation, thereby producing a confidence interval that was too narrow. United contends that, as a result, the Bureau disallowed TPIS in excess of the amount that would have been disallowed if the confidence ranges had been calculated correctly. United also alleges that the same error occurred in the Bureau's calculation of a trendline for CL and TS minutes of use, thereby resulting in upward adjustments of United's demand forecasts that were greater than warranted. *Id.* at 2.

4. United further asserts that because the Bureau used a two-part approach to analyzing unseparated costs, the second set of tests (cross-sectional analyses) may, in some instances, result in a cost disallowance, while the corrected trendline may show that no adjustment is warranted. United also notes that depreciation expenses totalling $203,000 on an unseparated basis were excluded from United Inter-Mountain Telephone Company's revenue requirement because of the Bureau's TPIS disallowance. United contends that this disallowance was unwarranted and requests that it be added back into its revenue requirement. *Id.* at 2-3.

5. Centel Telephone Companies (Centel) also contends that the Bureau incorrectly calculated the confidence intervals. Centel Application for Special Permission No. 76, filed July 20, 1990.

6. Upon review, we find that United's arguments are valid. The error made in computing the variance of the forecast had the effect of implying a confidence interval 1 to 2 percent higher than the declared interval of 95 percent. We have calculated the impact of these corrections for all the holding companies and find that it results in approximately a $22 million increase in allowable costs.

7. The attached charts revise pages contained in the *1990 Access Tariff Order* consistent with the discussion above. The National Exchange Carrier Association and local exchange carriers may file revised tariffs reflecting the rate adjustment factors and other adjustments contained in the appended charts. Carriers electing to file revised tariffs shall make such filings on October 17, 1990. Carriers need not provide further cost support data for these revisions nor file an application for special permission. Such tariff revisions shall be filed to be effective on not less than seven days' notice.

8. Accordingly, IT IS ORDERED that United Telephone Application No. 68, and Centel Telephone Companies Application No. 76, ARE GRANTED to the extent indicated herein.

9. IT IS FURTHER ORDERED that Sections 61.38, 61.56, 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.38, 61.56, 61.58 and 61.59, ARE WAIVED and Special Permission No. 90-748 is assigned for the purpose of compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Annual 1990 Access Tariff Filings, CC Docket No. 90-320, Memorandum Opinion and Order, DA 90-845, released June 21, 1990 (*1990 Access Tariff Order), recon. & app. for rev. pending.*

ATTACHMENT

MERGED RESULTS OF TREND AND CROSS-SECTION ANALYSES

TIER I REVENUE REQUIREMENT DISALLOWANCE CHART (TPIS & ELD) -- MERGE 4 PARTS

PART A

PAGE 1 SHOWS REVENUE REQUIREMENT DISALLOWANCES BASED ON TREND ANALYSIS
FOR TOTAL PLANT IN SERVICE - TPIS and
FOR EXPENSE LESS DEPRECIATION - ELD
by OPERATING COMPANY

PART B

PAGE 2 SHOWS REVENUE REQUIREMENT DISALLOWANCES BASED ON CROSS-SECTION ANALYSIS OF INDIVIDUAL COST ITEMS
FOR TOTAL PLANT IN SERVICE - TPIS and
FOR EXPENSE LESS DEPRECIATION - ELD
by OPERATING COMPANY

PART C

PAGE 3 SHOWS FINAL REVENUE REQUIREMENT DISALLOWANCES
FOR TOTAL PLANT IN SERVICE - TPIS and
FOR EXPENSE LESS DEPRECIATION - ELD
by OPERATING COMPANY

THIS CHART CONTAINS THE TPIS AND ELD ROW FROM EITHER PART A OR PART B THAT HAD THE HIGHEST TOTAL DISALLOWANCE

PART D

PAGE 4 SUMMARIZES THE INFORMATION IN PART C BY
OPERATING COMPANY and
HOLDING COMPANY

June 7, 1990

MERGED RESULTS OF TREND AND CROSS-SECTION ANALYSES

TIER I REVENUE REQUIREMENT DISALLOWANCE CHART (TPIS & ELD) -- MERGE

4 PARTS

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THIS CHART CONTAINS CONTAINS THE TPIS AND ELD ROW FROM EITHER PART A OR PART B THAT HAD THE HIGHEST TOTAL DISALLOWANCE

PART D

PAGE 4 SUMMARIZES THE INFORMATION IN PART C BY
OPERATING COMPANY and
HOLDING COMPANY

Unseparated Disallowances and
Access Category Disallowances for
Expenses Less Depreciation (ELD)

Operating Company	TRP PYCOS	TRP Forecast	Trend Line PYCOS	Trend Line Forecast	95% Confidence Interval of Trend Line		Trend Line Forecast +/- One Standard Deviation	
					Lower Bound	Upper Bound	Lower Bound	Upper Bound
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
LBIL	$1,438,090	$1,527,777	$1,413,577	$1,470,873	$1,373,620	$1,568,127	$1,427,223	$1,514,524
NBIN	$497,698	$519,079	$494,019	$529,531	$508,395	$550,666	$520,044	$539,017
MBMI	$1,230,717	$1,326,901	$1,231,852	$1,267,400	$1,219,972	$1,314,827	$1,246,112	$1,288,687
OBOH	$898,893	$955,268	$882,206	$916,328	$779,510	$1,053,146	$854,919	$977,737
WTWI	$503,451	$520,804	$491,302	$515,157	$454,034	$576,281	$487,723	$542,592
CPTC	$1,949,620	$2,056,519	$1,926,607	$2,018,636	$1,892,021	$2,145,251	$1,961,807	$2,075,465
DSDE	$94,334	$97,497	$92,284	$95,624	$81,721	$109,528	$89,384	$101,865
PAPA	$1,336,740	$1,383,559	$1,309,256	$1,382,197	$1,155,500	$1,608,894	$1,280,448	$1,483,946
NJNJ	$1,334,387	$1,381,975	$1,302,325	$1,300,029	$1,144,906	$1,455,151	$1,230,404	$1,369,653
SBTC	$3,246,457	$3,494,579	$3,255,096	$3,399,043	$3,232,677	$3,565,409	$3,324,372	$3,473,714
SCTC	$2,181,253	$2,383,828	$2,166,983	$2,214,057	$2,064,416	$2,363,697	$2,146,893	$2,281,220
NETC	$1,966,929	$1,937,812	$1,964,870	$2,125,935	$1,939,117	$2,312,753	$2,042,085	$2,209,785
NYNY	$3,805,911	$4,193,664	$3,800,842	$3,893,227	$3,697,681	$4,088,772	$3,805,459	$3,980,994
PTCA	$3,872,636	$4,170,857	$3,839,660	$3,470,552	$3,058,224	$3,882,880	$3,285,486	$3,655,618
PTNV	$92,754	$85,608	$89,908	$103,366	$73,863	$132,869	$90,124	$116,608
SWTR	$3,261,143	$3,399,912	$3,230,912	$3,143,603	$2,906,964	$3,380,241	$3,037,391	$3,249,814
MSTC	$1,804,230	$1,790,511	$1,798,235	$1,771,987	$1,606,560	$1,937,413	$1,697,737	$1,846,236
NWTC	$1,027,733	$1,031,315	$1,023,899	$1,011,522	$865,608	$1,157,435	$946,031	$1,077,012
PNTC	$871,269	$871,775	$862,742	$840,092	$735,250	$944,934	$793,035	$887,149
CEFL	$80,634	$87,302	$78,381	$84,231	$71,515	$96,947	$78,524	$89,938
CENV	$104,883	$114,545	$102,401	$115,001	$103,175	$126,826	$109,693	$120,308
CBTC	$238,804	$265,803	$229,296	$237,044	$188,566	$285,521	$215,285	$258,802
COCA	$142,262	$136,363	$136,962	$155,661	$134,894	$176,428	$146,340	$164,982
CONY	$87,637	$94,113	$86,893	$98,450	$78,562	$118,338	$89,524	$107,376
COTX	$77,400	$79,956	$76,989	$85,811	$74,569	$97,052	$80,765	$90,856
COVA	$140,969	$159,864	$138,511	$159,699	$141,162	$178,236	$151,379	$168,019
GTCA	$1,294,657	$1,444,208	$1,284,668	$1,333,719	$1,212,983	$1,454,454	$1,279,528	$1,387,909
GTFL	$582,469	$594,030	$590,895	$659,371	$618,572	$700,170	$641,059	$677,683
GTNW	$300,484	$285,345	$290,424	$295,939	$247,770	$344,108	$274,319	$317,559
GTSO	$429,005	$411,575	$424,467	$464,163	$427,516	$500,810	$447,715	$480,611
GTSW	$550,763	$533,226	$543,979	$559,560	$511,612	$607,508	$538,040	$581,080
GTNW	$1,100,824	$1,096,159	$1,056,515	$1,129,730	$949,949	$1,309,510	$1,049,038	$1,210,421
GTHI	$193,334	$184,230	$180,817	$195,216	$146,358	$244,074	$173,287	$217,145
LTNE	$59,153	$65,094	$59,153	$60,935	$58,415	$63,455	$59,905	$61,965
RTNY	$122,278	$136,619	$120,921	$130,832	$119,468	$142,197	$125,732	$135,933
SNCT	$750,517	$755,987	$752,097	$794,080	$758,425	$829,735	$778,077	$810,083
UTFL	$290,499	$322,939	$292,522	$322,509	$296,727	$348,292	$310,937	$334,082
UTIN	$58,507	$61,713	$57,788	$62,275	$57,066	$67,484	$59,937	$64,613
UTNC	$203,320	$222,270	$202,950	$213,207	$190,865	$235,548	$203,179	$223,234
UTOH	$139,698	$153,850	$138,280	$151,381	$140,165	$162,597	$146,347	$156,415
UTPA	$73,113	$80,466	$71,034	$70,460	$58,342	$82,579	$65,021	$75,900
UTIM	$69,759	$76,599	$70,538	$77,503	$69,139	$85,866	$73,749	$81,256
total	$38,470,096	$40,491,496	$38,135,935	$38,870,139	$37,449,182	$40,291,095	$38,232,366	$39,507,911
Sum of OPCOs	$38,505,214	$40,491,496	$38,163,053	$38,925,932				

NOTES: (1) ELD data are from row 310, columns (A) through (R) on Chart COS-2 in the 1990 TRP for 1986 through 1989 and for the test period. Voluntary Employee Benefit Association (VEBA) and VEBA-like amounts are removed from both the historical and the prospective data.
(2) The 'total' row is computed from a trend line regression of total ELD less VEBA and VEBA-like amounts. The 'SUM OF OPCOS' row is the sum of the operating company data reported in this chart.

Unseparated Disallowances and
Access Category Disallowances for
Expenses Less Depreciation (ELD)

Operating Company	TRP Forecast Over TRP PYCOS (I)	Trend Forecast Over TRP PYCOS (J)	Trend Forecast Over Trend PYCOS (K)	95% CI Lower Bound Over TRP PYCOS (L)	95% CI Upper Bound Over TRP PYCOS (M)	+/- 1 SD Lower Bound Over TRP PYCOS (N)	+/- 1 SD Upper Bound Over TRP PYCOS (O)
	Annualized Growth Rates						
LBIL	4.12%	1.51%	2.68%	-3.01%	5.94%	-0.50%	3.51%
NBIN	2.84%	4.22%	4.74%	1.43%	6.97%	2.97%	5.46%
MBMI	5.14%	1.98%	1.91%	-0.58%	4.51%	0.83%	3.12%
OBOH	4.14%	1.29%	2.56%	-9.06%	11.14%	-3.29%	5.77%
WTWI	2.28%	1.54%	3.21%	-6.66%	9.43%	-2.09%	5.12%
CPTC	3.62%	2.35%	3.16%	-1.98%	6.58%	0.42%	4.26%
DSDE	2.22%	0.91%	2.40%	-9.13%	10.47%	-3.53%	5.25%
PAPA	2.32%	2.25%	3.68%	-9.26%	13.15%	-2.83%	7.21%
NJNJ	2.36%	-1.72%	-0.12%	-9.71%	5.95%	-5.26%	1.75%
SBTC	5.03%	3.11%	2.93%	-0.28%	6.45%	1.59%	4.61%
SCTC	6.10%	1.00%	1.44%	-3.60%	5.50%	-1.05%	3.03%
NETC	-0.99%	5.32%	5.39%	-0.94%	11.40%	2.53%	8.07%
NYNY	6.68%	1.52%	1.61%	-1.90%	4.90%	-0.01%	3.04%
PTCA	5.07%	-7.05%	-6.52%	-14.56%	0.18%	-10.38%	-3.77%
PTNV	-5.20%	7.49%	9.75%	-14.09%	27.08%	-1.90%	16.48%
SWTR	2.82%	-2.42%	-1.81%	-7.38%	2.42%	-4.63%	-0.23%
MSTC	-0.51%	-1.19%	-0.98%	-7.44%	4.86%	-3.97%	1.55%
NWTC	0.23%	-1.05%	-0.81%	-10.81%	8.25%	-5.37%	3.17%
PNTC	0.04%	-2.40%	-1.76%	-10.70%	5.56%	-6.08%	1.21%
CEFL	5.44%	2.95%	4.92%	-7.69%	13.07%	-1.75%	7.55%
CENV	6.05%	6.33%	8.04%	-1.09%	13.50%	3.03%	9.58%
CBTC	7.40%	-0.49%	2.24%	-14.57%	12.65%	-6.68%	5.51%
COCA	-2.78%	6.18%	8.91%	-3.48%	15.43%	1.90%	10.38%
CONY	4.87%	8.07%	8.68%	-7.03%	22.17%	1.43%	14.50%
COTX	2.19%	7.12%	7.50%	-2.45%	16.28%	2.88%	11.28%
COVA	8.75%	8.67%	9.95%	0.09%	16.93%	4.86%	12.41%
GTCA	7.56%	2.00%	2.53%	-4.25%	8.07%	-0.78%	4.75%
GTFL	1.32%	8.62%	7.58%	4.09%	13.05%	6.60%	10.62%
GTNW	-3.39%	-1.01%	1.26%	-12.07%	9.46%	-5.89%	3.75%
GTSO	-2.73%	5.39%	6.14%	-0.23%	10.87%	2.89%	7.87%
GTSW	-2.13%	1.06%	1.90%	-4.80%	6.76%	-1.55%	3.64%
GTMW	-0.28%	1.74%	4.57%	-9.36%	12.27%	-3.16%	6.53%
GTHI	-3.16%	0.65%	5.24%	-16.94%	16.81%	-7.04%	8.05%
LTNE	6.59%	2.00%	2.00%	-0.83%	4.79%	0.85%	3.14%
RTNY	7.67%	4.61%	5.39%	-1.54%	10.58%	1.87%	7.31%
SNCT	0.49%	3.83%	3.69%	0.70%	6.92%	2.43%	5.22%
UTFL	7.31%	7.22%	6.72%	1.42%	12.86%	4.64%	9.77%
UTIN	3.62%	4.25%	5.11%	-1.65%	9.98%	1.62%	6.84%
UTNC	6.12%	3.22%	3.34%	-4.13%	10.31%	-0.05%	6.43%
UTOH	6.64%	5.50%	6.22%	0.22%	10.65%	3.15%	7.83%
UTPA	6.60%	-2.43%	-0.54%	-13.97%	8.46%	-7.52%	2.53%
UTIM	6.43%	7.27%	6.48%	-0.59%	14.85%	3.78%	10.71%
total	3.47%	0.69%	1.28%	-1.78%	3.13%	-0.41%	1.79%
Sum of OPCOs	3.41%	0.73%	1.33%				

NOTES: (1) The growth rates in columns (I) thru (O) are annualized by raising the ratio of the value listed in the column heading to the 2/3 power, and subtracting one. For example, column (I) equals ((column (B) / column (A)) ^ (2/3)) - 1.

Unseparated Disallowances and
Access Category Disallowances for
Expenses Less Depreciation (ELD)

Operating Company	Total Unseparated ELD Forecast	Common Line ELD Forecast	CL/TOT Ratio	TS-Switched ELD Forecast	TS-SW/TOT Ratio	Special Access ELD Forecast	SpAc/TOT Ratio
	(P)	(Q)	(R)	(S)	(T)	(U)	(V)
LBIL	$1,570,112	$137,597	8.76%	$155,836	9.93%	$68,574	4.37%
NBIN	$526,543	$49,261	9.36%	$56,180	10.67%	$18,838	3.58%
MBMI	$1,366,614	$110,794	8.11%	$92,592	6.78%	$30,435	2.23%
OBOH	$1,035,662	$83,482	8.06%	$82,546	7.97%	$33,992	3.28%
WTWI	$605,652	$43,962	7.26%	$53,112	8.77%	$16,713	2.76%
CPTC	$2,172,392	$236,306	10.88%	$195,452	9.00%	$83,181	3.83%
DSDE	$103,696	$14,538	14.02%	$11,887	11.46%	$4,762	4.59%
PAPA	$1,472,122	$149,512	10.16%	$120,383	8.18%	$48,690	3.31%
NJNJ	$1,457,844	$154,428	10.59%	$161,938	11.11%	$53,376	3.66%
SBTC	$3,548,233	$433,574	12.22%	$248,303	7.00%	$112,191	3.16%
SCTC	$2,405,289	$257,087	10.69%	$190,765	7.93%	$62,518	2.60%
NETC	$1,989,743	$197,293	9.92%	$253,216	12.73%	$55,931	2.81%
NYNY	$4,193,664	$376,821	8.99%	$508,055	12.11%	$157,334	3.75%
PTCA	$4,484,999	$398,959	8.90%	$269,477	6.01%	$112,265	2.50%
PTNV	$94,089	$12,245	13.01%	$14,586	15.50%	$2,175	2.31%
SWTR	$3,487,966	$345,215	9.90%	$272,776	7.82%	$117,588	3.37%
MSTC	$1,869,764	$209,828	11.22%	$230,441	12.32%	$41,848	2.24%
NWTC	$1,178,795	$93,595	7.94%	$129,451	10.98%	$27,138	2.30%
PNTC	$1,093,655	$81,892	7.49%	$79,821	7.30%	$21,752	1.99%
CEFL	$86,761	$9,685	11.16%	$6,604	7.61%	$2,257	2.60%
CENV	$110,369	$14,128	12.80%	$13,441	12.18%	$4,452	4.03%
CBTC	$265,724	$21,170	7.97%	$18,735	7.05%	$10,239	3.85%
COCA	$137,990	$12,052	8.73%	$8,260	5.99%	$1,399	1.01%
CONY	$94,085	$9,066	9.64%	$6,853	7.28%	$952	1.01%
COTX	$79,898	$8,040	10.06%	$4,489	5.62%	$396	0.50%
COVA	$175,033	$16,385	9.36%	$13,631	7.79%	$2,033	1.16%
GTCA	$1,382,446	$130,505	9.44%	$88,695	6.42%	$24,707	1.79%
GTFL	$604,183	$89,278	14.78%	$45,556	7.54%	$14,891	2.46%
GTNW	$309,315	$37,790	12.22%	$33,348	10.78%	$6,973	2.25%
GTSO	$415,189	$49,162	11.84%	$39,104	9.42%	$11,608	2.80%
GTSW	$547,139	$59,666	10.91%	$39,171	7.16%	$9,724	1.78%
GTNW	$1,158,844	$116,996	10.10%	$92,442	7.98%	$19,991	1.73%
GTHI	$185,230	$18,065	9.75%	$22,253	12.01%	$6,459	3.49%
LTNE	$64,630	$4,049	6.26%	$6,628	10.26%	$1,942	3.00%
RTNY	$136,619	$9,957	7.29%	$6,714	4.91%	$4,544	3.33%
SNCT	$757,488	$61,453	8.11%	$76,051	10.04%	$18,743	2.47%
UTFL	$331,365	$49,511	14.94%	$30,149	9.10%	$5,058	1.53%
UTIN	$61,474	$7,274	11.83%	$4,749	7.73%	$1,797	2.92%
UTNC	$223,588	$27,024	12.09%	$15,612	6.98%	$3,404	1.52%
UTOH	$163,381	$15,805	9.67%	$12,194	7.46%	$4,389	2.69%
UTPA	$92,408	$8,316	9.00%	$5,323	5.76%	$1,430	1.55%
UTIM	$76,692	$8,489	11.07%	$5,146	6.71%	$1,937	2.53%
total Sum of OPCOs	$42,116,685	$4,170,255	9.90%	$3,721,965	8.84%	$1,228,626	2.92%

NOTES: (1) The Total Unseparated, Common Line, TS-Switched, and Special Access ELD forecast data are from row 1190 minus row 1180, columns (f), (m),(r), and (s), respectively, on COS-1(P) in the 1990 TRP.
(2) Columns (R), (T), and (V) are computed by dividing columns (Q), (S), and (U), respectively, by Column (P).

Unseparated Disallowances and
Access Category Disallowances for
Expenses Less Depreciation (ELD)

Operating Company	Fail Report Card?	Tentative Unseparated ELD Disallowance	Dis-allowance As Percentage of TRP Forecast	Final Unseparated ELD Disallowance	Common Line ELD Disallowance	TS-Switched ELD Disallowance	Special Access ELD Disallowance	Total Interstate ELD Disallowances
	(W)	(X)	(Y)	(Z)	(AA)	(AB)	(AC)	(AD)
LBIL	Yes	$13,253	0.87%	$13,253	$1,161	$1,315	$579	$3,056
NBIN	Yes							
MBMI	Yes	$38,214	2.88%	$38,214	$3,098	$2,589	$851	$6,538
OBOH	No							
WTWI	No							
CPTC	Yes							
DSDE	Yes							
PAPA	Yes							
NJNJ	Yes	$12,322	0.89%	$12,322	$1,305	$1,369	$451	$3,125
SBTC	No							
SCTC	Yes	$102,608	4.30%	$102,608	$10,967	$8,138	$2,667	$21,772
NETC	No							
NYNY	Yes	$212,670	5.07%	$212,670	$19,109	$25,765	$7,979	$52,853
PTCA	Yes	$223,664	5.36%	$223,664	$19,896	$13,439	$5,599	$38,933
PTNV	No							
SWTR	Yes	$75,985	2.23%	$75,985	$7,520	$5,942	$2,562	$16,024
MSTC	No							
NWTC	No							
PNTC	No							
CEFL	No							
CENV	No							
CBTC	Yes	$7,001	2.63%					
COCA	No							
CONY	No							
COTX	Yes							
COVA	No							
GTCA	Yes	$56,299	3.90%	$56,299	$5,315	$3,612	$1,006	$9,933
GTFL	Yes							
GTNW	Yes							
GTSO	Yes							
GTSW	Yes							
GTMW	Yes							
GTHI	Yes							
LTNE	Yes	$3,129	4.81%	$3,129	$196	$321	$94	$611
RTNY	No							
SNCT	No							
UTFL	No							
UTIN	Yes							
UTNC	No							
UTOH	No							
UTPA	No							
UTIM	Yes							
total	No							
Sum of OPCOs		$745,146	1.84%	$738,145	$68,568	$62,490	$21,787	$152,845

NOTES: (1) Columns (AA), (AB), and (AC) are computed by multiplying columns (R), (T), and (V), respectively, by column (Z). Column (AD) is the sum of columns (AA), (AB), and (AC).

(2) Column (X) is: the TRP forecast minus the upper bound of the 95% confidence interval if the company passes its report card, or; the TRP forecast minus the upper bound of the trend +/- one standard deviation if the company fails its report card. However, if such an adjustment would take a company's projection below its PYCOS amount, grown at the total trend growth rate, the forecast was adjusted no lower than the PYCOS amount grown at the total trend rate.

Unseparated Disallowances and
Access Category Disallowances for
Telephone Plant in Service (TPIS)

Operating Company	TRP PYCOS	TRP Forecast	Trend Line PYCOS	Trend Line Forecast	95% Confidence Interval of Trend Line Forecast		Trend Line Forecast +/- one Standard Deviation	
					Lower Bound	Upper Bound	Lower Bound	Upper Bound
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
LBIL	$7,033,298	$7,623,455	$7,092,612	$7,689,465	$7,539,784	$7,839,145	$7,617,503	$7,761,426
NBIN	$2,575,054	$2,749,533	$2,638,699	$2,833,557	$2,707,835	$2,959,278	$2,773,114	$2,894,000
MBMI	$6,775,103	$7,233,396	$6,803,393	$7,340,781	$7,244,581	$7,436,980	$7,294,531	$7,387,030
OBOH	$4,663,894	$4,956,703	$4,796,774	$5,097,676	$4,889,681	$5,305,671	$4,997,679	$5,197,674
WTWI	$2,403,505	$2,501,366	$2,466,218	$2,640,118	$2,506,558	$2,773,678	$2,575,906	$2,704,329
CPTC	$11,260,487	$12,225,005	$11,356,374	$12,362,407	$12,010,355	$12,714,458	$12,193,151	$12,531,662
DSDE	$572,160	$626,291	$573,199	$622,204	$612,314	$632,095	$617,450	$626,959
PAPA	$7,632,492	$8,270,763	$7,633,403	$8,272,943	$8,165,799	$8,380,087	$8,221,432	$8,324,455
NJNJ	$7,338,919	$7,958,791	$7,315,228	$7,941,414	$7,881,977	$8,000,851	$7,912,838	$7,969,989
SBTC	$18,929,637	$20,315,393	$18,852,459	$20,566,069	$20,372,100	$20,760,038	$20,472,814	$20,659,323
SCTC	$13,832,882	$14,848,834	$13,902,520	$14,898,513	$14,747,297	$15,049,729	$14,825,813	$14,971,213
NETC	$9,680,985	$10,495,638	$9,648,533	$10,392,911	$10,270,355	$10,515,468	$10,333,990	$10,451,833
NYNY	$17,480,670	$17,323,649	$17,531,126	$18,759,391	$18,595,195	$18,923,586	$18,680,451	$18,838,330
PTCA	$22,663,629	$22,983,675	$22,965,678	$24,837,240	$24,141,263	$25,533,218	$24,502,636	$25,171,845
PTNV	$427,975	$434,839	$428,114	$441,934	$436,425	$447,442	$439,285	$444,582
SWTR	$22,941,109	$23,556,689	$23,274,415	$25,014,662	$24,183,437	$25,845,888	$24,615,035	$25,414,290
MSTC	$10,811,046	$11,764,826	$11,075,965	$11,976,659	$11,553,773	$12,399,545	$11,773,348	$12,179,970
NWTC	$6,663,421	$6,962,898	$6,674,469	$7,128,939	$7,076,960	$7,180,917	$7,103,949	$7,153,928
PNTC	$5,056,263	$5,392,257	$5,079,371	$5,432,831	$5,359,745	$5,505,917	$5,397,694	$5,467,969
CEFL	$446,739	$494,129	$449,627	$502,429	$469,119	$535,738	$486,415	$518,443
CENV	$489,575	$555,793	$483,682	$498,779	$466,755	$530,803	$483,953	$513,605
CBTC	$1,070,094	$1,187,385	$1,083,877	$1,149,107	$1,106,497	$1,191,716	$1,128,621	$1,169,592
COCA	$615,558	$696,897	$609,487	$647,511	$632,201	$662,821	$640,151	$654,872
CONY	$429,632	$473,932	$429,870	$465,241	$457,955	$472,527	$461,738	$468,744
COTX	$432,176	$480,860	$437,738	$480,903	$468,006	$493,800	$474,703	$487,103
COVA	$620,853	$727,492	$623,532	$678,595	$664,552	$692,638	$671,843	$685,346
GTCA	$6,949,958	$7,390,294	$6,970,016	$7,577,304	$7,461,320	$7,693,288	$7,521,543	$7,633,066
GTFL	$3,307,781	$3,520,457	$3,324,858	$3,624,920	$3,581,726	$3,668,115	$3,604,154	$3,645,687
GTNW	$1,957,927	$2,147,211	$1,963,754	$2,150,241	$2,116,401	$2,184,081	$2,133,972	$2,166,510
GTSO	$2,457,121	$2,617,293	$2,496,976	$2,847,691	$2,723,506	$2,971,877	$2,787,987	$2,907,396
GTSW	$3,438,259	$3,540,980	$3,478,470	$3,784,138	$3,691,862	$3,876,414	$3,739,774	$3,828,502
GTMW	$6,534,247	$6,726,576	$6,482,061	$6,795,686	$6,665,200	$6,926,171	$6,732,952	$6,858,419
GTHI	$1,154,485	$1,265,646	$1,166,140	$1,234,142	$1,204,031	$1,264,253	$1,219,665	$1,248,619
LTNE	$363,521	$392,638	$365,836	$374,659	$362,002	$387,316	$368,978	$380,340
RTNY	$680,777	$753,620	$671,119	$709,629	$688,491	$730,768	$699,466	$719,792
SNCT	$3,237,582	$3,622,131	$3,217,147	$3,594,030	$3,486,216	$3,701,843	$3,544,116	$3,643,944
UTFL	$1,762,686	$1,994,027	$1,757,250	$1,909,122	$1,828,693	$1,989,552	$1,870,455	$1,947,790
UTIN	$349,092	$377,605	$348,948	$370,792	$345,042	$396,543	$358,412	$383,173
UTNC	$1,191,821	$1,281,422	$1,184,437	$1,236,195	$1,188,190	$1,284,200	$1,213,970	$1,258,419
UTOH	$782,952	$863,773	$782,720	$833,087	$815,162	$851,013	$824,789	$841,386
UTPA	$462,201	$506,337	$457,150	$489,831	$466,464	$513,197	$479,013	$500,648
UTIM	$428,519	$467,871	$428,177	$454,590	$429,757	$479,424	$443,093	$466,087
total	$217,906,085	$230,308,370	$219,271,903	$236,460,274	$233,851,861	$239,068,686	$235,206,229	$237,714,318
SUM OF OPCOS	$217,906,085	$230,308,370	$219,321,419	$236,658,337				

NOTES: (1) TPIS data are from row 370, columns (A) through (J) on COS-3 in the 1988 TRP for 1984 and 1985 and from row 370, columns (A) thru (R) on COS-2 in the 1990 TRP for 1986 thru 1989 and for the test period.
(2) The 'total' row is computed from a trend line regression of total TPIS. The 'SUM OF OPCOS' row is the sum of the operating company data reported in this chart.
(3) Regression for LTNE was run on data from 4Q/86 forward, as that was the earliest date from which data were available.
(4) Because of a marked change in trend from 1Q/86, regressions for CENV, SNCT, UTNC, UTOH, UTPA, and UTIM were run on data from that date forward.

Unseparated Disallowances and
Access Category Disallowances for
Telephone Plant in Service (TPIS)

Operating Company	TRP Forecast Over TRP PYCOS (I)	Trend Forecast Over TRP PYCOS (J)	Trend Forecast Over Trend PYCOS (K)	95% CI Lower Bound Over TRP PYCOS (L)	95% CI Upper Bound Over TRP PYCOS (M)	+/- 1 SD Lower Bound Over TRP PYCOS (N)	+/- 1 SD Upper Bound Over TRP PYCOS (O)
	Annualized Growth Rates						
LBIL	5.52%	6.13%	5.53%	4.74%	7.50%	5.46%	6.79%
NBIN	4.47%	6.59%	4.86%	3.41%	9.72%	5.06%	8.10%
MBMI	4.46%	5.49%	5.20%	4.57%	6.41%	5.05%	5.93%
OBOH	4.14%	6.11%	4.14%	3.20%	8.98%	4.72%	7.49%
WTWI	2.70%	6.46%	4.65%	2.84%	10.02%	4.75%	8.18%
CPTC	5.63%	6.42%	5.82%	4.39%	8.43%	5.45%	7.39%
DSDE	6.21%	5.75%	5.62%	4.63%	6.87%	5.21%	6.29%
PAPA	5.50%	5.52%	5.51%	4.61%	6.43%	5.08%	5.96%
NJNJ	5.55%	5.40%	5.63%	4.87%	5.93%	5.15%	5.65%
SBTC	4.82%	5.68%	5.97%	5.02%	6.35%	5.36%	6.00%
SCTC	4.84%	5.07%	4.72%	4.36%	5.78%	4.73%	5.41%
NETC	5.53%	4.84%	5.08%	4.02%	5.67%	4.45%	5.24%
NYNY	-0.60%	4.82%	4.62%	4.21%	5.43%	4.52%	5.11%
PTCA	0.94%	6.30%	5.36%	4.30%	8.27%	5.34%	7.25%
PTNV	1.07%	2.16%	2.14%	1.31%	3.01%	1.75%	2.57%
SWTR	1.78%	5.94%	4.92%	3.58%	8.27%	4.81%	7.06%
MSTC	5.80%	7.06%	5.35%	4.53%	9.57%	5.85%	8.27%
NWTC	2.97%	4.60%	4.49%	4.10%	5.11%	4.36%	4.85%
PNTC	4.38%	4.91%	4.59%	3.96%	5.84%	4.45%	5.36%
CEFL	6.95%	8.15%	7.68%	3.31%	12.88%	5.84%	10.43%
CENV	8.83%	1.25%	2.07%	-3.13%	5.54%	-0.77%	3.25%
CBTC	7.18%	4.86%	3.97%	2.26%	7.44%	3.61%	6.11%
COCA	8.63%	3.43%	4.12%	1.79%	5.06%	2.65%	4.21%
CONY	6.76%	5.45%	5.41%	4.35%	6.55%	4.92%	5.98%
COTX	7.38%	7.38%	6.47%	5.45%	9.29%	6.46%	8.30%
COVA	11.15%	6.11%	5.80%	4.64%	7.57%	5.40%	6.81%
GTCA	4.18%	5.93%	5.73%	4.85%	7.01%	5.41%	6.45%
GTFL	4.24%	6.29%	5.93%	5.45%	7.14%	5.89%	6.70%
GTNW	6.35%	6.45%	6.23%	5.33%	7.56%	5.91%	6.96%
GTSO	4.30%	10.33%	9.16%	7.10%	13.52%	8.79%	11.87%
GTSW	1.98%	6.60%	5.78%	4.86%	8.32%	5.76%	7.43%
GTNW	1.95%	2.65%	3.20%	1.33%	3.96%	2.02%	3.28%
GTHI	6.32%	4.55%	3.85%	2.84%	6.24%	3.73%	5.36%
LTNE	5.27%	2.03%	1.60%	-0.28%	4.32%	1.00%	3.06%
RTNY	7.01%	2.81%	3.79%	0.75%	4.84%	1.82%	3.79%
SNCT	7.77%	7.21%	7.66%	5.06%	9.34%	6.22%	8.20%
UTFL	8.57%	5.46%	5.68%	2.48%	8.41%	4.04%	6.88%
UTIN	5.37%	4.10%	4.13%	-0.78%	8.87%	1.77%	6.41%
UTNC	4.95%	2.47%	2.89%	-0.20%	5.10%	1.24%	3.69%
UTOH	6.77%	4.22%	4.25%	2.72%	5.71%	3.53%	4.92%
UTPA	6.27%	3.95%	4.71%	0.61%	7.23%	2.41%	5.47%
UTIM	6.03%	4.02%	4.07%	0.19%	7.77%	2.25%	5.76%
total	3.76%	5.60%	5.16%	4.82%	6.37%	5.23%	5.97%
SUM OF OPCOS	3.76%	5.66%	5.20%				

NOTES: (1) The growth rates in columns (I) thru (O) are annualized by raising the ratio of the value listed in the column heading to the 2/3 power, and subtracting one. For example, column (I) equals ((column (B) / column (A)) ^ (2/3)) - 1.

Unseparated Disallowances and
Access Category Disallowances for
Telephone Plant in Service (TPIS)

Operating Company	Total Unseparated TPIS Forecast (P)	Common Line TPIS Forecast (Q)	CL/TOT Ratio (R)	TS-Switched TPIS Forecast (S)	TS-SW/TOT Ratio (T)	Special Access TPIS Forecast (U)	SpAc/TOT Ratio (V)
LBIL	$7,623,455	$719,091	9.43%	$914,409	11.99%	$341,369	4.48%
NBIN	$2,749,533	$297,376	10.82%	$315,165	11.46%	$106,451	3.87%
MBMI	$7,233,396	$752,783	10.41%	$586,355	8.11%	$160,720	2.22%
OBOH	$4,956,707	$492,000	9.93%	$476,155	9.61%	$172,827	3.49%
WTWI	$2,501,366	$260,802	10.43%	$276,820	11.07%	$88,955	3.56%
CPTC	$12,225,005	$1,537,656	12.58%	$1,133,237	9.27%	$531,123	4.34%
DSDE	$626,291	$99,826	15.94%	$67,677	10.81%	$32,624	5.21%
PAPA	$8,270,763	$1,021,500	12.35%	$698,197	8.44%	$337,351	4.08%
NJNJ	$7,958,791	$993,241	12.48%	$977,464	12.28%	$359,871	4.52%
SBTC	$20,315,393	$3,186,030	15.68%	$1,583,262	7.79%	$729,378	3.59%
SCTC	$14,848,834	$1,964,074	13.23%	$1,316,804	8.87%	$378,249	2.55%
NETC	$10,495,638	$1,228,868	11.71%	$1,472,478	14.03%	$248,576	2.37%
NYNY	$17,323,649	$1,668,004	9.63%	$2,487,586	14.36%	$719,102	4.15%
PTCA	$22,983,675	$2,623,873	11.42%	$1,683,359	7.32%	$677,073	2.95%
PTNV	$434,839	$85,786	19.73%	$63,585	14.62%	$12,578	2.89%
SWTR	$23,556,689	$2,896,521	12.30%	$2,203,804	9.36%	$977,122	4.15%
MSTC	$11,764,826	$1,649,389	14.02%	$1,662,609	14.13%	$293,368	2.49%
NWTC	$6,962,898	$804,608	11.56%	$955,290	13.72%	$202,920	2.91%
PNTC	$5,392,257	$690,356	12.80%	$593,796	11.01%	$152,712	2.83%
CEFL	$494,129	$73,101	14.79%	$38,234	7.74%	$12,164	2.46%
CENV	$555,793	$98,013	17.63%	$84,784	15.25%	$13,326	2.40%
CBTC	$1,187,382	$106,703	8.99%	$97,525	8.21%	$55,439	4.67%
COCA	$696,897	$90,011	12.92%	$46,601	6.69%	$8,656	1.24%
CONY	$473,932	$64,208	13.55%	$42,167	8.90%	$6,161	1.30%
COTX	$480,860	$69,537	14.46%	$27,718	5.76%	$2,487	0.52%
COVA	$727,492	$100,139	13.76%	$76,608	10.53%	$11,231	1.54%
GTCA	$7,390,295	$857,437	11.60%	$495,718	6.71%	$99,767	1.35%
GTFL	$3,520,458	$611,003	17.36%	$275,620	7.83%	$82,107	2.33%
GTNW	$2,147,214	$301,591	14.05%	$266,222	12.40%	$45,272	2.11%
GTSO	$2,617,294	$351,307	13.42%	$262,925	10.05%	$68,922	2.63%
GTSW	$3,540,981	$486,194	13.73%	$288,267	8.14%	$53,532	1.51%
GTNW	$6,726,580	$839,310	12.48%	$610,551	9.08%	$111,837	1.66%
GTHI	$1,265,647	$141,475	11.18%	$164,145	12.97%	$34,443	2.72%
LTNE	$392,638	$42,155	10.74%	$55,493	14.13%	$11,627	2.96%
RTNY	$753,620	$79,310	10.52%	$57,246	7.60%	$39,651	5.26%
SNCT	$3,708,628	$397,683	10.72%	$444,725	11.99%	$111,446	3.01%
UTFL	$1,994,027	$365,855	18.35%	$223,964	11.23%	$35,808	1.80%
UTIN	$386,424	$54,630	14.14%	$32,835	8.50%	$10,493	2.72%
UTNC	$1,281,422	$171,529	13.39%	$129,102	10.07%	$23,965	1.87%
UTOH	$863,773	$94,714	10.97%	$80,448	9.31%	$27,687	3.21%
UTPA	$521,294	$64,853	12.44%	$38,959	7.47%	$8,617	1.65%
UTIM	$482,822	$62,672	12.98%	$37,837	7.84%	$12,121	2.51%
total	$230,433,607	$28,495,214	12.37%	$23,345,746	10.13%	$7,409,128	3.22%
SUM OF OPCOS	$230,433,607	$28,495,214	12.37%	$23,345,746	10.13%	$7,409,128	3.22%

NOTES: (1) The Total Unseparated, Common Line, TS-Switched, and Special Access TPIS forecast data are from row 1690, columns (f), (m), (r), and (s) on COS-1(P) in the 1990 TRP.
(2) Columns (R), (T), and (V) are computed by dividing columns (Q), (S), and (U), respectively, by Column (P).

Unseparated Disallowances and
Access Category Disallowances for
Telephone Plant in Service (TPIS)

Operating Company	Fail Report Card ?	Tentative Unseparated TPIS Disallowance	Dis-allowance As Percentage of TRP Forecast	Final Unseparated TPIS Disallowance	Common Line TPIS Disallowance	TS-Switched TPIS Disallowance	Special Access TPIS Disallowance
	(W)	(X)	(Y)	(Z)	(AA)	(AB)	(AC)
LBIL	Yes						
NBIN	Yes						
MBMI	No						
OBOH	No						
WTWI	No						
CPTC	No						
DSDE	Yes						
PAPA	Yes						
NJNJ	Yes						
SBTC	No						
SCTC	No						
NETC	No						
NYNY	No						
PTCA	Yes						
PTNV	Yes						
SWTR	Yes						
MSTC	No						
NWTC	Yes						
PNTC	Yes						
CEFL	No						
CENV	No	$24,990	4.50%	$24,990	$4,407	$3,812	$599
CBTC	Yes	$17,793	1.50%	$17,793	$1,599	$1,461	$831
COCA	Yes	$33,086	4.75%	$33,086	$4,273	$2,212	$411
CONY	Yes	$5,188	1.09%	$5,188	$703	$462	$67
COTX	Yes						
COVA	Yes	$42,146	5.79%	$42,146	$5,801	$4,438	$651
GTCA	No						
GTFL	No						
GTNW	No						
GTSO	No						
GTSW	No						
GTMW	No						
GTHI	No	$1,393	0.11%	$1,393	$156	$181	$38
LTNE	No	$621	0.16%	$621	$67	$88	$18
RTNY	Yes	$19,478	2.58%	$19,478	$2,050	$1,480	$1,025
SNCT	No						
UTFL	No	$4,475	0.22%	$4,475	$821	$503	$80
UTIN	No						
UTNC	No						
UTOH	No	$12,760	1.48%	$12,760	$1,399	$1,188	$409
UTPA	No						
UTIM	No						
total	No						
SUM OF OPCOS		$161,930	0.07%	$161,930	$21,276	$15,825	$4,129

NOTES: (1) Column (X), is: the TRP forecast minus the upper bound of the 95% confidence interval if the company passes its report card, or; the TRP forecast minus the upper bound of the trend +/- one standard deviation if the company fails its report card. However, if such an adjustment would take a company's forecast below its PYCOS amount, grown at the total trend growth rate, the forecast was adjusted to the PYCOS amount grown at the total trend growth rate.

(2) Columns (AA), (AB), and (AC) are computed by multiplying columns (R), (T), and (V), respectively, by column (Z).

(3) Tentative disallowances for DSDE and NJNJ were deleted in column (Z) because the disallowances were de minimis and because of apparent autocorrelation in the model.

Unseparated Disallowances and
Access Category Disallowances for
Telephone Plant in Service (TPIS)

Operating Company	Revenue Requirement Effect of Common Line TPIS Disallowance (AD)	Revenue Requirement Effect of TS-Switched TPIS Disallowance (AE)	Revenue Requirement Effect of Special Access TPIS Disallowance (AF)	Revenue Requirement Effect of Interstate TPIS Disallowance (AG)
LBIL				
NBIN				
MBMI				
OBOH				
WTWI				
CPTC				
DSDE				
PAPA				
NJNJ				
SBTC				
SCTC				
NETC				
NYNY				
PTCA				
PTNV				
SWTR				
MSTC				
NWTC				
PNTC				
CEFL				
CENV	$801	$693	$109	$1,603
CBTC	$291	$266	$151	$707
COCA	$777	$402	$75	$1,254
CONY	$128	$84	$12	$224
COTX				
COVA	$1,055	$807	$118	$1,980
GTCA				
GTFL				
GTNW				
GTSO				
GTSW				
GTMW				
GTHI	$28	$33	$7	$68
LTNE	$12	$16	$3	$31
RTNY	$373	$269	$186	$828
SNCT				
UTFL	$149	$91	$15	$255
UTIN				
UTNC				
UTOH	$254	$216	$74	$545
UTPA				
UTIN				
total SUM OF OPCOS	$3,868	$2,877	$751	$7,496

NOTES: (1) Columns (AD), (AE), and (AF) are computed by multiplying columns (AA), (AB), and (AC), respectively, by .12 * (1 + (.34 / (1 - .34))).
(2) Column (AG) is the sum of columns (AD), (AE), and (AF).

MERGE

PROSPECTIVE TOTAL ACCESS REVENUE RECURRING CHARGES excl ICBs TRP SOURCE: (REV2 R.120-C.H) REV

PART A — PAGE 1 OF 4

TREND ANALYSIS REVENUE REQUIREMENT DISALLOWANCES

A.1 TOTAL PLANT IN SERVICE - TPIS

REVENUE REQUIREMENT DISALLOWANCE CHART ($ TO NEAREST THOUSAND)		REV	COMMON LINE A	TS SWITCHED B	SPECIAL ACCESS C	TOTAL D	PERCENT (D / REV) E	
** TOTAL ALL OPERATING COMPANIES	TOTL	$19,269,328	$3,868	$2,877	$751	$7,496	0.04%	TOTL
1 ILLINOIS BELL	LBIL	753,033						
2 INDIANA BELL	NBIN	244,565						
3 MICHIGAN BELL	MBMI	521,331						
4 OHIO BELL	OBOH	426,228						
5 WISCONSIN BELL	WTWI	227,962						
6 CHESAPEAKE & POTOMAC	CPTC	1,102,559						
7 DIAMOND STATE TEL.	DSDE	68,129						
8 BELL OF PENNSYLVANIA	PAPA	703,259						
9 NEW JERSEY BELL	NJNJ	795,160						
10 SOUTHERN BELL	SBTC	1,657,322						
11 SOUTH CENTRAL BELL	SCTC	1,086,150						
12 NEW ENGLAND TELEPHONE	NETC	1,051,233						
13 NEW YORK TELEPHONE	NYNY	2,004,003						
14 PACIFIC BELL	PTCA	1,595,691						
15 NEVADA BELL	PTNV	52,443						
16 SOUTHWESTERN BELL TEL. CO.	SWTR	1,700,079						
17 MOUNTAIN BELL	MSTC	1,065,527						
18 NORTHWESTERN BELL	NWTC	551,702						
19 PACIFIC NORTHWEST BELL	PNTC	401,911						
20 CENTRAL OF FLORIDA	CEFL	26,159						
21 CENTRAL OF NEVADA	CENV	62,251	$801	$693	$109	$1,603	2.58%	CENV
22 CINCINNATI BELL TELEPHONE	CBTC	106,324	$291	$266	$151	$707	0.67%	CBTC
23 CONTEL OF CALIFORNIA	COCA	49,790	$777	$402	$75	$1,254	2.52%	COCA
24 CONTEL OF NEW YORK	CONY	36,556	$128	$84	$12	$224	0.61%	CONY
25 CONTEL OF TEXAS	COTX	29,288						
26 CONTEL OF VIRGINIA	COVA	61,304	$1,055	$807	$118	$1,980	3.23%	COVA
27 GTE CALIFORNIA, INC.	GTCA	481,048						
28 GTE FLORIDA, INC.	GTFL	276,067						
29 GTE NORTHWEST, INC.	GTNW	184,074						
30 GTE SOUTH, INC.	GTSO	214,562						
31 GTE SOUTHWEST, INC.	GTSW	227,261						
32 GTE NORTH, INC.	GTMW	511,304						
33 GTE HAWAIIAN, INC.	GTHI	112,402	$28	$33	$7	$68	0.06%	GTHI
34 LINCOLN TELEPHONE COMPANY	LTNE	34,912	$12	$16	$3	$31	0.09%	LTNE
35 ROCHESTER TELEPHONE CORPORATION	RTNY	53,614	$373	$269	$186	$828	1.54%	RTNY
36 SOUTHERN NEW ENGLAND TELEPHONE	SNCT	332,872						
37 UNITED OF FLORIDA	UTFL	198,218	$149	$91	$15	$255	0.13%	UTFL
38 UNITED OF INDIANA	UTIN	31,113						
39 CAROLINA TEL. & TEL.	UTNC	101,653						
40 UNITED OF OHIO	UTOH	66,988	$254	$216	$74	$545	0.81%	UTOH
41 UNITED OF PENN.	UTPA	31,621						
42 UNITED INTER-MOUNTAIN	UTIM	31,661						

A.2 - EXPENSE LESS DEPRECIATION - ELD

** TOTAL ALL OPERATING COMPANIES	TOTL	$19,269,328	$68,568	$62,490	$21,787	$152,845	0.79%	TOTL
1 ILLINOIS BELL	LBIL	$753,033	$1,161	$1,315	$579	$3,056	0.41%	LBIL
2 INDIANA BELL	NBIN	$244,565						
3 MICHIGAN BELL	MBMI	$521,331	$3,098	$2,589	$851	$6,538	1.25%	MBMI
4 OHIO BELL	OBOH	$426,228						
5 WISCONSIN BELL	WTWI	$227,962						
6 CHESAPEAKE & POTOMAC	CPTC	$1,102,559						
7 DIAMOND STATE TEL.	DSDE	$68,129						
8 BELL OF PENNSYLVANIA	PAPA	$703,259						
9 NEW JERSEY BELL	NJNJ	$795,160	$1,305	$1,369	$451	$3,125	0.39%	NJNJ
10 SOUTHERN BELL	SBTC	$1,657,322						
11 SOUTH CENTRAL BELL	SCTC	$1,086,150	$10,967	$8,138	$2,667	$21,772	2.00%	SCTC
12 NEW ENGLAND TELEPHONE	NETC	$1,051,233						
13 NEW YORK TELEPHONE	NYNY	$2,004,003	$19,109	$25,765	$7,979	$52,853	2.64%	NYNY
14 PACIFIC BELL	PTCA	$1,595,691	$19,896	$13,439	$5,599	$38,933	2.44%	PTCA
15 NEVADA BELL	PTNV	$52,443						
16 SOUTHWESTERN BELL TEL. CO.	SWTR	$1,700,079	$7,520	$5,942	$2,562	$16,024	0.94%	SWTR
17 MOUNTAIN BELL	MSTC	$1,065,527						
18 NORTHWESTERN BELL	NWTC	$551,702						
19 PACIFIC NORTHWEST BELL	PNTC	$401,911						
20 CENTRAL OF FLORIDA	CEFL	$26,159						
21 CENTRAL OF NEVADA	CENV	$62,251						
22 CINCINNATI BELL TELEPHONE	CBTC	$106,324						
23 CONTEL OF CALIFORNIA	COCA	$49,790						
24 CONTEL OF NEW YORK	CONY	$36,556						
25 CONTEL OF TEXAS	COTX	$29,288						
26 CONTEL OF VIRGINIA	COVA	$61,304						
27 GTE CALIFORNIA, INC.	GTCA	$481,048	$5,315	$3,612	$1,006	$9,933	2.06%	GTCA
28 GTE FLORIDA, INC.	GTFL	$276,067						
29 GTE NORTHWEST, INC.	GTNW	$184,074						
30 GTE SOUTH, INC.	GTSO	$214,562						
31 GTE SOUTHWEST, INC.	GTSW	$227,261						
32 GTE NORTH, INC.	GTMW	$511,304						
33 GTE HAWAIIAN, INC.	GTHI	$112,402						
34 LINCOLN TELEPHONE COMPANY	LTNE	$34,912	$196	$321	$94	$611	1.75%	LTNE
35 ROCHESTER TELEPHONE CORPORATION	RTNY	$53,614						
36 SOUTHERN NEW ENGLAND TELEPHONE	SNCT	$332,872						
37 UNITED OF FLORIDA	UTFL	$198,218						
38 UNITED OF INDIANA	UTIN	$31,113						
39 CAROLINA TEL. & TEL.	UTNC	$101,653						
40 UNITED OF OHIO	UTOH	$66,988						
41 UNITED OF PENN.	UTPA	$31,621						
42 UNITED INTER-MOUNTAIN	UTIM	$31,661						

*** TOTAL TPIS & ELD $160,342 ***

PART B
CROSS-SECTION ANALYSIS OF INDIVIDUAL COST ITEMS
B.1 TOTAL PLANT IN SERVICE - TPIS

REVENUE REQUIREMENT DISALLOWANCE CHART
($ TO NEAREST THOUSAND)

PROSPECTIVE TOTAL ACCESS REVENUE RECURRING CHARGES excl ICBs
TRP SOURCE: (REV2 R.120-C.H)

		REV	COMMON LINE	TS SWITCHED	SPECIAL ACCESS	TOTAL	PERCENT (D / REV)	
			A	B	C	D	E	
** TOTAL ALL OPERATING COMPANIES	TOTL	$19,269,328	$14,756	$41,927	$12,241	$68,924	0.36%	TOTL
1 ILLINOIS BELL	LBIL	$753,033						
2 INDIANA BELL	NBIN	$244,565						
3 MICHIGAN BELL	MBMI	$521,331						
4 OHIO BELL	OBOH	$426,228						
5 WISCONSIN BELL	WTWI	$227,962						
6 CHESAPEAKE & POTOMAC	CPTC	$1,102,559	$1,245	$1,437	$678	$3,359	0.30%	CPTC
7 DIAMOND STATE TEL.	DSDE	$68,129						
8 BELL OF PENNSYLVANIA	PAPA	$703,259						
9 NEW JERSEY BELL	NJNJ	$795,160						
10 SOUTHERN BELL	SBTC	$1,657,322	$4,630	$103	$378	$5,112	0.31%	SBTC
11 SOUTH CENTRAL BELL	SCTC	$1,086,150	$804	$1,461	$153	$2,418	0.22%	SCTC
12 NEW ENGLAND TELEPHONE	NETC	$1,051,233		$1,808		$1,808	0.17%	NETC
13 NEW YORK TELEPHONE	NYNY	$2,004,003		$4,218	$1,700	$5,918	0.30%	NYNY
14 PACIFIC BELL	PTCA	$1,595,691						
15 NEVADA BELL	PTNV	$52,443						
16 SOUTHWESTERN BELL TEL. CO.	SWTR	$1,700,079	$86	$8,562	$4,254	$12,902	0.76%	SWTR
17 MOUNTAIN BELL	MSTC	$1,065,527	$1,157	$4,465	$665	$6,287	0.59%	MSTC
18 NORTHWESTERN BELL	NWTC	$551,702	$324	$13,546	$1,794	$15,664	2.84%	NWTC
19 PACIFIC NORTHWEST BELL	PNTC	$401,911		$1,690	$172	$1,862	0.46%	PNTC
20 CENTRAL OF FLORIDA	CEFL	$26,159	$23	$11	$4	$37	0.14%	CEFL
21 CENTRAL OF NEVADA	CENV	$62,251						
22 CINCINNATI BELL TELEPHONE	CBTC	$106,324	$194	$448	$261	$904	0.85%	CBTC
23 CONTEL OF CALIFORNIA	COCA	$49,790		$566		$566	1.14%	COCA
24 CONTEL OF NEW YORK	CONY	$36,556	$526	$194	$22	$742	2.03%	CONY
25 CONTEL OF TEXAS	COTX	$29,288						
26 CONTEL OF VIRGINIA	COVA	$61,304	$1,372	$603	$71	$2,045	3.34%	COVA
27 GTE CALIFORNIA, INC.	GTCA	$481,048		$56	$230	$286	0.06%	GTCA
28 GTE FLORIDA, INC.	GTFL	$276,067	$2,231	$810	$1,243	$4,285	1.55%	GTFL
29 GTE NORTHWEST, INC.	GTNW	$184,074	$611	$24	$37	$671	0.36%	GTNW
30 GTE SOUTH, INC.	GTSO	$214,562	$971	$242	$63	$1,275	0.59%	GTSO
31 GTE SOUTHWEST, INC.	GTSW	$227,261	$25	$27	$3	$55	0.02%	GTSW
32 GTE NORTH, INC.	GTMW	$511,304	$12	$40	$61	$113	0.02%	GTMW
33 GTE HAWAIIAN, INC.	GTHI	$112,402						
34 LINCOLN TELEPHONE COMPANY	LTNE	$34,912		$67		$67	0.19%	LTNE
35 ROCHESTER TELEPHONE CORPORATION	RTNY	$53,614	$163	$425	$82	$670	1.25%	RTNY
36 SOUTHERN NEW ENGLAND TELEPHONE	SNCT	$332,872						
37 UNITED OF FLORIDA	UTFL	$198,218	$203	$1,121	$359	$1,683	0.85%	UTFL
38 UNITED OF INDIANA	UTIN	$31,113						
39 CAROLINA TEL. & TEL.	UTNC	$101,653						
40 UNITED OF OHIO	UTOH	$66,988	$179		$11	$190	0.28%	UTOH
41 UNITED OF PENN.	UTPA	$31,621		$6		$6	0.02%	UTPA
42 UNITED INTER-MOUNTAIN	UTIM	$31,661						

B.2 - EXPENSE LESS DEPRECIATION - ELD

** TOTAL ALL OPERATING COMPANIES	TOTL	$19,269,328	$40,246	$42,090	$13,332	$95,668	0.50%	TOTL
1 ILLINOIS BELL	LBIL	$753,033	$4,517	$1,019	$770	$6,305	0.84%	LBIL
2 INDIANA BELL	NBIN	$244,565	$2,607	$1,354	$606	$4,567	1.87%	NBIN
3 MICHIGAN BELL	MBMI	$521,331	$3,697	$901	$284	$4,882	0.94%	MBMI
4 OHIO BELL	OBOH	$426,228	$1,829	$222	$208	$2,259	0.53%	OBOH
5 WISCONSIN BELL	WTWI	$227,962						
6 CHESAPEAKE & POTOMAC	CPTC	$1,102,559						
7 DIAMOND STATE TEL.	DSDE	$68,129						
8 BELL OF PENNSYLVANIA	PAPA	$703,259						
9 NEW JERSEY BELL	NJNJ	$795,160						
10 SOUTHERN BELL	SBTC	$1,657,322	$652	$148	$359	$1,159	0.07%	SBTC
11 SOUTH CENTRAL BELL	SCTC	$1,086,150	$6,031	$5,404	$1,547	$12,982	1.20%	SCTC
12 NEW ENGLAND TELEPHONE	NETC	$1,051,233	$1,258	$4,553	$777	$6,588	0.63%	NETC
13 NEW YORK TELEPHONE	NYNY	$2,004,003	$5,024	$15,444	$3,791	$24,259	1.21%	NYNY
14 PACIFIC BELL	PTCA	$1,595,691	$5,940	$3,729	$1,671	$11,340	0.71%	PTCA
15 NEVADA BELL	PTNV	$52,443						
16 SOUTHWESTERN BELL TEL. CO.	SWTR	$1,700,079	$2,720	$4,476	$1,958	$9,155	0.54%	SWTR
17 MOUNTAIN BELL	MSTC	$1,065,527	$53	$27	$46	$127	0.01%	MSTC
18 NORTHWESTERN BELL	NWTC	$551,702	$122	$1,064	$137	$1,324	0.24%	NWTC
19 PACIFIC NORTHWEST BELL	PNTC	$401,911	$5	$25	$5	$35	0.01%	PNTC
20 CENTRAL OF FLORIDA	CEFL	$26,159	$292	$199	$68	$558	2.13%	CEFL
21 CENTRAL OF NEVADA	CENV	$62,251						
22 CINCINNATI BELL TELEPHONE	CBTC	$106,324	$891	$775	$439	$2,104	1.98%	CBTC
23 CONTEL OF CALIFORNIA	COCA	$49,790						
24 CONTEL OF NEW YORK	CONY	$36,556	$128	$94	$13	$236	0.64%	CONY
25 CONTEL OF TEXAS	COTX	$29,288	$254	$310	$28	$592	2.02%	COTX
26 CONTEL OF VIRGINIA	COVA	$61,304	$463	$343	$63	$869	1.42%	COVA
27 GTE CALIFORNIA, INC.	GTCA	$481,048	$1,572	$729	$147	$2,448	0.51%	GTCA
28 GTE FLORIDA, INC.	GTFL	$276,067						
29 GTE NORTHWEST, INC.	GTNW	$184,074	$14	$35	$3	$52	0.03%	GTNW
30 GTE SOUTH, INC.	GTSO	$214,562	$40	$101	$13	$154	0.07%	GTSO
31 GTE SOUTHWEST, INC.	GTSW	$227,261						
32 GTE NORTH, INC.	GTMW	$511,304	$645	$341	$101	$1,086	0.21%	GTMW
33 GTE HAWAIIAN, INC.	GTHI	$112,402						
34 LINCOLN TELEPHONE COMPANY	LTNE	$34,912						
35 ROCHESTER TELEPHONE CORPORATION	RTNY	$53,614	$242	$154	$106	$503	0.94%	RTNY
36 SOUTHERN NEW ENGLAND TELEPHONE	SNCT	$332,872						
37 UNITED OF FLORIDA	UTFL	$198,218	$349	$24	$18	$391	0.20%	UTFL
38 UNITED OF INDIANA	UTIN	$31,113						
39 CAROLINA TEL. & TEL.	UTNC	$101,653	$318	$184	$40	$542	0.53%	UTNC
40 UNITED OF OHIO	UTOH	$66,988	$234	$169	$60	$463	0.69%	UTOH
41 UNITED OF PENN.	UTPA	$31,621	$155	$151	$31	$338	1.07%	UTPA
42 UNITED INTER-MOUNTAIN	UTIM	$31,661	$194	$116	$40	$350	1.11%	UTIM
*** TOTAL TPIS & ELD						$164,593	***	

REVENUE REQUIREMENT DISALLOWANCE CHART ($ TO NEAREST THOUSAND)		PROSPECTIVE TOTAL ACCESS REVENUE RECURRING CHARGES excl ICBs TRP SOURCE: (REV2 R.120-C.H) REV	ROW WITH HIGHEST TOTAL FROM PART A OR B C.1 TOTAL PLANT IN SERVICE - TPIS COMMON LINE A	TS SWITCHED B	SPECIAL ACCESS C	TOTAL D	PERCENT (D / REV) E	SOURCE A OR B F
** TOTAL ALL OPERATING COMPANIES	TOTL	$19,269,328	$16,647	$42,549	$12,599	$71,796	0.37%	TOTL
1 ILLINOIS BELL	LBIL	$753,033						
2 INDIANA BELL	NBIN	$244,565						
3 MICHIGAN BELL	MBMI	$521,331						
4 OHIO BELL	OBOH	$426,228						
5 WISCONSIN BELL	WTWI	$227,962						
6 CHESAPEAKE & POTOMAC	CPTC	$1,102,559	$1,245	$1,437	$678	$3,359	0.30%	CPTC B
7 DIAMOND STATE TEL.	DSDE	$68,129						
8 BELL OF PENNSYLVANIA	PAPA	$703,259						
9 NEW JERSEY BELL	NJNJ	$795,160						
10 SOUTHERN BELL	SBTC	$1,657,322	$4,630	$103	$378	$5,112	0.31%	SBTC B
11 SOUTH CENTRAL BELL	SCTC	$1,086,150	$804	$1,461	$153	$2,418	0.22%	SCTC B
12 NEW ENGLAND TELEPHONE	NETC	$1,051,233		$1,808		$1,808	0.17%	NETC B
13 NEW YORK TELEPHONE	NYNY	$2,004,003		$4,218	$1,700	$5,918	0.30%	NYNY B
14 PACIFIC BELL	PTCA	$1,595,691						
15 NEVADA BELL	PTNV	$52,443						
16 SOUTHWESTERN BELL TEL. CO.	SWTR	$1,700,079	$86	$8,562	$4,254	$12,902	0.76%	SWTR B
17 MOUNTAIN BELL	MSTC	$1,065,527	$1,157	$4,465	$665	$6,287	0.59%	MSTC B
18 NORTHWESTERN BELL	NWTC	$551,702	$324	$13,546	$1,794	$15,664	2.84%	NWTC B
19 PACIFIC NORTHWEST BELL	PNTC	$401,911		$1,690	$172	$1,862	0.46%	PNTC B
20 CENTRAL OF FLORIDA	CEFL	$26,159	$23	$11	$4	$37	0.14%	CEFL B
21 CENTRAL OF NEVADA	CENV	$62,251	$801	$693	$109	$1,603	2.58%	CENV A
22 CINCINNATI BELL TELEPHONE	CBTC	$106,324	$194	$448	$261	$904	0.85%	CBTC B
23 CONTEL OF CALIFORNIA	COCA	$49,790	$777	$402	$75	$1,254	2.52%	COCA A
24 CONTEL OF NEW YORK	CONY	$36,556	$526	$194	$22	$742	2.03%	CONY B
25 CONTEL OF TEXAS	COTX	$29,288						
26 CONTEL OF VIRGINIA	COVA	$61,304	$1,372	$603	$71	$2,045	3.34%	COVA B
27 GTE CALIFORNIA, INC.	GTCA	$481,048		$56	$230	$286	0.06%	GTCA B
28 GTE FLORIDA, INC.	GTFL	$276,067	$2,231	$810	$1,243	$4,285	1.55%	GTFL B
29 GTE NORTHWEST, INC.	GTNW	$184,074	$611	$24	$37	$671	0.36%	GTNW B
30 GTE SOUTH, INC.	GTSO	$214,562	$971	$242	$63	$1,275	0.59%	GTSO B
31 GTE SOUTHWEST, INC.	GTSW	$227,261	$25	$27	$3	$55	0.02%	GTSW B
32 GTE NORTH, INC.	GTMW	$511,304	$12	$40	$61	$113	0.02%	GTMW B
33 GTE HAWAIIAN, INC.	GTHI	$112,402	$28	$33	$7	$68	0.06%	GTHI A
34 LINCOLN TELEPHONE COMPANY	LTNE	$34,912		$67		$67	0.19%	LTNE B
35 ROCHESTER TELEPHONE CORPORATION	RTNY	$53,614	$373	$269	$186	$828	1.54%	RTNY A
36 SOUTHERN NEW ENGLAND TELEPHONE	SNCT	$332,872						
37 UNITED OF FLORIDA	UTFL	$198,218	$203	$1,121	$359	$1,683	0.85%	UTFL B
38 UNITED OF INDIANA	UTIN	$31,113						
39 CAROLINA TEL. & TEL.	UTNC	$101,653						
40 UNITED OF OHIO	UTOH	$66,988	$254	$216	$74	$545	0.81%	UTOH A
41 UNITED OF PENN.	UTPA	$31,621		$6		$6	0.02%	UTPA B
42 UNITED INTER-MOUNTAIN	UTIM	$31,661						
. . .	.	.						
			C.2 - EXPENSE LESS DEPRECIATION - ELD					
** TOTAL ALL OPERATING COMPANIES	TOTL	$19,269,328	$82,668	$72,581	$25,142	$180,391	0.94%	TOTL
1 ILLINOIS BELL	LBIL	$753,033	$4,517	$1,019	$770	$6,305	0.84%	LBIL B
2 INDIANA BELL	NBIN	$244,565	$2,607	$1,354	$606	$4,567	1.87%	NBIN B
3 MICHIGAN BELL	MBMI	$521,331	$3,098	$2,589	$851	$6,538	1.25%	MBMI A
4 OHIO BELL	OBOH	$426,228	$1,829	$222	$208	$2,259	0.53%	OBOH B
5 WISCONSIN BELL	WTWI	$227,962						
6 CHESAPEAKE & POTOMAC	CPTC	$1,102,559						
7 DIAMOND STATE TEL.	DSDE	$68,129						
8 BELL OF PENNSYLVANIA	PAPA	$703,259						
9 NEW JERSEY BELL	NJNJ	$795,160	$1,305	$1,369	$451	$3,125	0.39%	NJNJ A
10 SOUTHERN BELL	SBTC	$1,657,322	$652	$148	$359	$1,159	0.07%	SBTC B
11 SOUTH CENTRAL BELL	SCTC	$1,086,150	$10,967	$8,138	$2,667	$21,772	2.00%	SCTC A
12 NEW ENGLAND TELEPHONE	NETC	$1,051,233	$1,258	$4,553	$777	$6,588	0.63%	NETC B
13 NEW YORK TELEPHONE	NYNY	$2,004,003	$19,109	$25,765	$7,979	$52,853	2.64%	NYNY A
14 PACIFIC BELL	PTCA	$1,595,691	$19,896	$13,439	$5,599	$38,933	2.44%	PTCA A
15 NEVADA BELL	PTNV	$52,443						
16 SOUTHWESTERN BELL TEL. CO.	SWTR	$1,700,079	$7,520	$5,942	$2,562	$16,024	0.94%	SWTR A
17 MOUNTAIN BELL	MSTC	$1,065,527	$53	$27	$46	$127	0.01%	MSTC B
18 NORTHWESTERN BELL	NWTC	$551,702	$122	$1,064	$137	$1,324	0.24%	NWTC B
19 PACIFIC NORTHWEST BELL	PNTC	$401,911	$5	$25	$5	$35	0.01%	PNTC B
20 CENTRAL OF FLORIDA	CEFL	$26,159	$292	$199	$68	$558	2.13%	CEFL B
21 CENTRAL OF NEVADA	CENV	$62,251						
22 CINCINNATI BELL TELEPHONE	CBTC	$106,324	$891	$775	$439	$2,104	1.98%	CBTC B
23 CONTEL OF CALIFORNIA	COCA	$49,790						
24 CONTEL OF NEW YORK	CONY	$36,556	$128	$94	$13	$236	0.64%	CONY B
25 CONTEL OF TEXAS	COTX	$29,288	$254	$310	$28	$592	2.02%	COTX B
26 CONTEL OF VIRGINIA	COVA	$61,304	$463	$343	$63	$869	1.42%	COVA B
27 GTE CALIFORNIA, INC.	GTCA	$481,048	$5,315	$3,612	$1,006	$9,933	2.06%	GTCA A
28 GTE FLORIDA, INC.	GTFL	$276,067						
29 GTE NORTHWEST, INC.	GTNW	$184,074	$14	$35	$3	$52	0.03%	GTNW B
30 GTE SOUTH, INC.	GTSO	$214,562	$40	$101	$13	$154	0.07%	GTSO B
31 GTE SOUTHWEST, INC.	GTSW	$227,261						
32 GTE NORTH, INC.	GTMW	$511,304	$645	$341	$101	$1,086	0.21%	GTMW B
33 GTE HAWAIIAN, INC.	GTHI	$112,402						
34 LINCOLN TELEPHONE COMPANY	LTNE	$34,912	$196	$321	$94	$611	1.75%	LTNE A
35 ROCHESTER TELEPHONE CORPORATION	RTNY	$53,614	$242	$154	$106	$503	0.94%	RTNY B
36 SOUTHERN NEW ENGLAND TELEPHONE	SNCT	$332,872						
37 UNITED OF FLORIDA	UTFL	$198,218	$349	$24	$18	$391	0.20%	UTFL B
38 UNITED OF INDIANA	UTIN	$31,113						
39 CAROLINA TEL. & TEL.	UTNC	$101,653	$318	$184	$40	$542	0.53%	UTNC B
40 UNITED OF OHIO	UTOH	$66,988	$234	$169	$60	$463	0.69%	UTOH B
41 UNITED OF PENN.	UTPA	$31,621	$155	$151	$31	$338	1.07%	UTPA B
42 UNITED INTER-MOUNTAIN	UTIM	$31,661	$194	$116	$40	$350	1.11%	UTIM B
. . .	.	.	*** TOTAL TPIS & ELD			$252,187	***	. .

REVENUE REQUIREMENT DISALLOWANCE CHART

($ TO NEAREST THOUSAND)

PROSPECTIVE TOTAL ACCESS REVENUE RECURRING CHARGES excl ICBs TRP SOURCE: (REV2 R.120-C.H) REV

PART D
GRAND TOTALS TPIS & ELD FROM PART C
D.1 OPERATING COMPANY TOTALS

				COMMON LINE A	TS SWITCHED B	SPECIAL ACCESS C	TOTAL D	PERCENT (D / REV) E	
**	TOTAL ALL OPERATING COMPANIES	TOTL	$19,269,328	$99,316	$115,131	$37,741	$252,187	1.31%	TOTL
1	ILLINOIS BELL	LBIL	$753,033	$4,517	$1,019	$770	$6,305	0.84%	LBIL
2	INDIANA BELL	NBIN	$244,565	$2,607	$1,354	$606	$4,567	1.87%	NBIN
3	MICHIGAN BELL	MBMI	$521,331	$3,098	$2,589	$851	$6,538	1.25%	MBMI
4	OHIO BELL	OBOH	$426,228	$1,829	$222	$208	$2,259	0.53%	OBOH
5	WISCONSIN BELL	WTWI	$227,962						WTWI
6	CHESAPEAKE & POTOMAC	CPTC	$1,102,559	$1,245	$1,437	$678	$3,359	0.30%	CPTC
7	DIAMOND STATE TEL.	DSDE	$68,129						DSDE
8	BELL OF PENNSYLVANIA	PAPA	$703,259						PAPA
9	NEW JERSEY BELL	NJNJ	$795,160	$1,305	$1,369	$451	$3,125	0.39%	NJNJ
10	SOUTHERN BELL	SBTC	$1,657,322	$5,282	$251	$738	$6,270	0.38%	SBTC
11	SOUTH CENTRAL BELL	SCTC	$1,086,150	$11,772	$9,599	$2,820	$24,190	2.23%	SCTC
12	NEW ENGLAND TELEPHONE	NETC	$1,051,233	$1,258	$6,361	$777	$8,396	0.80%	NETC
13	NEW YORK TELEPHONE	NYNY	$2,004,003	$19,109	$29,982	$9,679	$58,771	2.93%	NYNY
14	PACIFIC BELL	PTCA	$1,595,691	$19,896	$13,439	$5,599	$38,933	2.44%	PTCA
15	NEVADA BELL	PTNV	$52,443						PTNV
16	SOUTHWESTERN BELL TEL. CO.	SWTR	$1,700,079	$7,607	$14,504	$6,816	$28,926	1.70%	SWTR
17	MOUNTAIN BELL	MSTC	$1,065,527	$1,210	$4,492	$711	$6,413	0.60%	MSTC
18	NORTHWESTERN BELL	NWTC	$551,702	$447	$14,610	$1,931	$16,989	3.08%	NWTC
19	PACIFIC NORTHWEST BELL	PNTC	$401,911	$5	$1,716	$177	$1,897	0.47%	PNTC
20	CENTRAL OF FLORIDA	CEFL	$26,159	$314	$210	$72	$596	2.28%	CEFL
21	CENTRAL OF NEVADA	CENV	$62,251	$801	$693	$109	$1,603	2.58%	CENV
22	CINCINNATI BELL TELEPHONE	CBTC	$106,324	$1,085	$1,223	$700	$3,008	2.83%	CBTC
23	CONTEL OF CALIFORNIA	COCA	$49,790	$777	$402	$75	$1,254	2.52%	COCA
24	CONTEL OF NEW YORK	CONY	$36,556	$654	$288	$36	$977	2.67%	CONY
25	CONTEL OF TEXAS	COTX	$29,288	$254	$310	$28	$592	2.02%	COTX
26	CONTEL OF VIRGINIA	COVA	$61,304	$1,835	$946	$133	$2,914	4.75%	COVA
27	GTE CALIFORNIA, INC.	GTCA	$481,048	$5,315	$3,669	$1,236	$10,219	2.12%	GTCA
28	GTE FLORIDA, INC.	GTFL	$276,067	$2,231	$810	$1,243	$4,285	1.55%	GTFL
29	GTE NORTHWEST, INC.	GTNW	$184,074	$624	$59	$40	$723	0.39%	GTNW
30	GTE SOUTH, INC.	GTSO	$214,562	$1,010	$342	$76	$1,429	0.67%	GTSO
31	GTE SOUTHWEST, INC.	GTSW	$227,261	$25	$27	$3	$55	0.02%	GTSW
32	GTE NORTH, INC.	GTNW	$511,304	$656	$381	$162	$1,199	0.23%	GTNW
33	GTE HAWAIIAN, INC.	GTHI	$112,402	$28	$33	$7	$68	0.06%	GTHI
34	LINCOLN TELEPHONE COMPANY	LTNE	$34,912	$196	$388	$94	$678	1.94%	LTNE
35	ROCHESTER TELEPHONE CORPORATION	RTNY	$53,614	$615	$423	$292	$1,331	2.48%	RTNY
36	SOUTHERN NEW ENGLAND TELEPHONE	SNCT	$332,872						SNCT
37	UNITED OF FLORIDA	UTFL	$198,218	$552	$1,145	$377	$2,074	1.05%	UTFL
38	UNITED OF INDIANA	UTIN	$31,113						UTIN
39	CAROLINA TEL. & TEL.	UTNC	$101,653	$318	$184	$40	$542	0.53%	UTNC
40	UNITED OF OHIO	UTOH	$66,988	$488	$385	$135	$1,008	1.50%	UTOH
41	UNITED OF PENN.	UTPA	$31,621	$155	$157	$31	$343	1.09%	UTPA
42	UNITED INTER-MOUNTAIN	UTIM	$31,661	$194	$116	$40	$350	1.11%	UTIM
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D.2 - HOLDING COMPANY TOTALS

**	TOTAL ALL HOLDING COMPANIES	$19,269,328	$99,316	$115,131	$37,741	$252,187	1.31%	
1	AMERITECH	$2,173,119	$12,051	$5,184	$2,435	$19,670	0.91%	
2	BELL ATLANTIC	$2,669,107	$2,550	$2,805	$1,129	$6,484	0.24%	
3	BELL SOUTH	$2,743,472	$17,054	$9,849	$3,557	$30,460	1.11%	
4	NYNEX	$3,055,236	$20,367	$36,343	$10,456	$67,166	2.20%	
5	PACIFIC TELESIS	$1,648,134	$19,896	$13,439	$5,599	$38,933	2.36%	
6	SOUTHWESTERN BELL TEL. CO.	$1,700,079	$7,607	$14,504	$6,816	$28,926	1.70%	
7	U.S. WEST	$2,019,139	$1,661	$20,818	$2,820	$25,299	1.25%	
8	CENTRAL TELEPHONE CO.	$88,410	$1,116	$903	$180	$2,199	2.49%	
9	CINCINNATI BELL TELEPHONE	$106,324	$1,085	$1,223	$700	$3,008	2.83%	
10	CONTINENTAL TELEPHONE CO.	$176,938	$3,520	$1,946	$272	$5,737	3.24%	
11	GTE	$2,006,718	$9,891	$5,320	$2,767	$17,979	0.90%	
12	LINCOLN TELEPHONE CO.	$34,912	$196	$388	$94	$678	1.94%	
13	ROCHESTER TELEPHONE CORP.	$53,614	$615	$423	$292	$1,331	2.48%	
14	SOUTHERN NEW ENGLAND TELEPHONE	$332,872						
15	UNITED TELEPHONE SYSTEM	$461,254	$1,708	$1,986	$623	$4,317	0.94%	

SUMMARY
REVENUE REQUIREMENT
DISALLOWANCE CHART

($ TO NEAREST THOUSAND)

OPERATING COMPANY TOTALS

		COMMON LINE	TS SWITCHED	SPECIAL ACCESS	TOTAL	
		A	B	C	D	
**	TOTAL ALL OPERATING COMPANIES TOTL	$38,620	$49,162	$9,333	$97,115	TOTL
1	ILLINOIS BELL LBIL					
2	INDIANA BELL NBIN					
3	MICHIGAN BELL MBMI					
4	OHIO BELL OBOH					
5	WISCONSIN BELL WTWI					
6	CHESAPEAKE & POTOMAC CPTC	$708	$775	$332	$1,815	CPTC
7	DIAMOND STATE TEL. DSDE					
8	BELL OF PENNSYLVANIA PAPA					
9	NEW JERSEY BELL NJNJ					
10	SOUTHERN BELL SBTC	$894	$630	$284	$1,808	SBTC
11	SOUTH CENTRAL BELL SCTC	$413	$356	$74	$843	SCTC
12	NEW ENGLAND TELEPHONE NETC	$26,274	$35,907	$5,841	$68,022	NETC
13	NEW YORK TELEPHONE NYNY	$706	$1,337	$363	$2,406	NYNY
14	PACIFIC BELL PTCA					
15	NEVADA BELL PTNV					
16	SOUTHWESTERN BELL TEL. CO. SWTR	$2,603	$2,013	$911	$5,527	SWTR
17	MOUNTAIN BELL MSTC	$1,749	$3,232	$540	$5,521	MSTC
18	NORTHWESTERN BELL NWTC	$1,331	$1,970	$371	$3,672	NWTC
19	PACIFIC NORTHWEST BELL PNTC	$183	$197	$35	$415	PNTC
20	CENTRAL OF FLORIDA CEFL	$476	$427	$115	$1,018	CEFL
21	CENTRAL OF NEVADA CENV					
22	CINCINNATI BELL TELEPHONE CBTC	$50	$57	$31	$138	CBTC
23	CONTEL OF CALIFORNIA COCA	$279	$181	$30	$490	COCA
24	CONTEL OF NEW YORK CONY	$125	$109	$13	$247	CONY
25	CONTEL OF TEXAS COTX					
26	CONTEL OF VIRGINIA COVA	$292	$276	$35	$603	COVA
27	GTE CALIFORNIA, INC. GTCA					
28	GTE FLORIDA, INC. GTFL	$406	$238	$72	$716	GTFL
29	GTE NORTHWEST, INC. GTNW	$80	$88	$14	$182	GTNW
30	GTE SOUTH, INC. GTSO	$1,117	$805	$169	$2,091	GTSO
31	GTE SOUTHWEST, INC. GTSW	$804	$428	$89	$1,321	GTSW
32	GTE NORTH, INC. GTMW	$128	$133	$13	$274	GTMW
33	GTE HAWAIIAN, INC. GTHI	$2	$3	$1	$6	GTHI
34	LINCOLN TELEPHONE COMPANY LTNE					
35	ROCHESTER TELEPHONE CORPORATION RTNY					
36	SOUTHERN NEW ENGLAND TELEPHONE SNCT					
37	UNITED OF FLORIDA UTFL					
38	UNITED OF INDIANA UTIN					
39	CAROLINA TEL. & TEL. UTNC					
40	UNITED OF OHIO UTOH					
41	UNITED OF PENN. UTPA					
42	UNITED INTER-MOUNTAIN UTIM					

HOLDING COMPANY TOTALS

**	TOTAL ALL HOLDING COMPANIES	$38,620	$49,162	$9,333	$97,115
1	AMERITECH				
2	BELL ATLANTIC	$708	$775	$332	$1,815
3	BELL SOUTH	$1,307	$986	$358	$2,651
4	NYNEX	$26,980	$37,244	$6,204	$70,428
5	PACIFIC TELESIS				
6	SOUTHWESTERN BELL TEL. CO.	$2,603	$2,013	$911	$5,527
7	U.S. WEST	$3,263	$5,399	$946	$9,608
8	CENTRAL TELEPHONE CO.	$476	$427	$115	$1,018
9	CINCINNATI BELL TELEPHONE	$50	$57	$31	$138
10	CONTINENTAL TELEPHONE CO.	$696	$566	$78	$1,340
11	GTE	$2,537	$1,695	$358	$4,590
12	LINCOLN TELEPHONE CO.				
13	ROCHESTER TELEPHONE CORP.				
14	SOUTHERN NEW ENGLAND TELEPHONE				
15	UNITED TELEPHONE SYSTEM				

UNSEPARATED DEPRECIATION EXPENSE DISALLOWANCE

($ 0 0 0)

	RATE ANALYSIS	STATION CONNECTION AMORTIZATION	PLANT DISALLOWANCE	TOTAL
	(A)	(B)	(C)	(D=A+B+C)
I- AMERITECH :	0	0	0	0
ILLINOIS BELL	0	0	0	0
INDIANA BELL	0	0	0	0
MICHIGAN BELL	0	0	0	0
OHIO BELL	0	0	0	0
WISCONSIN BELL	0	0	0	0
II- BELL ATLANTIC :	2,655	0	3,659	6,314
C & P OF WASHINGTON	0	0	1,692	1,692
C & P OF MARYLAND	0	0	0	0
C & P OF VIRGINIA	0	0	1,313	1,313
C & P OF WEST VIRGINIA	2,655	0	654	3,309
DIAMOND STATE	0	0	0	0
BELL OF PENNSYLVANIA	0	0	0	0
NEW JERSEY BELL	0	0	0	0
III- BELL SOUTH :	0	0	9,886	9,886
SOUTHERN BELL TOTAL :	0	0	6,608	6,608
-FLORIDA	0	0	1,651	1,651
-GEORGIA	0	0	4,210	4,210
-NORTH CAROLINA	0	0	736	736
-SOUTH CAROLINA	0	0	11	11
SOUTH CENTRAL BELL TOTAL	0	0	3,278	3,278
-ALABAMA	0	0	900	900
-KENTUCKY	0	0	143	143
-LOUISIANA	0	0	334	334
-MISSISSIPPI	0	0	1,859	1,859
-TENNESSEE	0	0	43	43
IV- NYNEX :	236,195	0	11,099	247,294
NEW ENGLAND TELEPHONE :	236,195	0	2,776	238,971
-MAINE	16,742	0	1,022	17,764
-MASSACHUSETTS	160,898	0	0	160,898
-NEW HAMPSHIRE	26,188	0	0	26,188
-RHODE ISLAND	21,339	0	0	21,339
-VERMONT	11,028	0	1,755	12,783
NEW YORK TELEPHONE :	0	0	8,322	8,322
V- PACIFIC TELESIS TOTAL :	0	0	0	0
- CALIFORNIA	0	0	0	0
-NEVADA	0	0	0	0

	UNSEPARATED DEPRECIATION EXPENSE DISALLOWANCE			
		($ 0 0 0)		
	RATE ANALYSIS	STATION CONNECTION AMORTIZATION	PLANT DISALLOWANCE	TOTAL
	(A)	(B)	(C)	(D=A+B+C)
VI- SOUTHWESTERN TOTAL :	0	1,494	22,069	23,563
-ARKANSAS	0	0	0	0
-KANSAS	0	0	220	220
-MISSOURI	0	854	2,870	3,724
-OKLAHOMA	0	0	3,195	3,195
-TEXAS	0	640	15,784	16,424
VII- US WEST :	11,474	0	20,564	32,038
MOUNTAIN BELL TOTAL :	11,474	0	6,490	17,964
-ARIZONA	0	0	0	0
-COLORADO	7,007	0	4,401	11,408
-IDAHO	0	0	1,106	1,106
-MONTANA	0	0	353	353
-NEW MEXICO	1,783	0	281	2,064
-UTAH	2,684	0	0	2,684
-WYOMING	0	0	350	350
NORTHWESTERN BELL :	0	0	12,436	12,436
-IOWA	0	0	2,102	2,102
-MINNESOTA	0	0	2,648	2,648
-NEBRASKA	0	0	4,342	4,342
-NORTH DAKOTA	0	0	2,560	2,560
-SOUTH DAKOTA	0	0	784	784
PACIFIC NORTHWEST BELL :	0	0	1,638	1,638
-IDAHO	0	0	108	108
-OREGON	0	0	0	0
-WASHINGTON	0	0	1,530	1,530
VIII- CONTEL :	0	0	5,797	5,797
-CALIFORNIA	0	0	2,448	2,448
-NEW YORK	0	0	1,020	1,020
-VIRGINIA	0	0	2,329	2,329
IX- CINCINNATI BELL :	0	0	645	645
-KENTUCKY	0	0	106	106
-OHIO	0	0	538	538

UNSEPARATED DEPRECIATION EXPENSE DISALLOWANCE

($ 0 0 0)

	RATE ANALYSIS	STATION CONNECTION AMORTIZATION	PLANT DISALLOWANCE	TOTAL
	(A)	(B)	(C)	(D=A+B+C)
X- GTE TOTAL :	12,438	0	5,112	17,550
GTE NORTH :	947	0	94	1,041
-ILLINOIS	0	0	0	0
-INDIANA	0	0	0	0
-IOWA	0	0	10	10
-MICHIGAN	0	0	30	30
-MINNESOTA	0	0	13	13
-MISSOURI	0	0	30	30
-NEBRASKA	947	0	12	959
-OHIO	0	0	0	0
-PENNSYLVANIA	0	0	0	0
-WISCONSIN	0	0	0	0
GTE SOUTH :	6,099	0	1,705	7,804
-ALABAMA	1,282	0	218	1,500
-GEORGIA	1,458	0	306	1,764
-KENTUCKY	0	0	0	0
-NORTH CAROLINA	0	0	25	25
-SOUTH CAROLINA	2,308	0	684	2,992
-TENNESSEE	1,051	0	164	1,215
-VIRGINIA	0	0	203	203
-WEST VIRGINIA	0	0	103	103
GTE SOUTHWEST :	5,392	0	42	5,434
-ARKANSAS	0	0	0	0
-NEW MEXICO	245	0	33	278
-OKLAHOMA	668	0	9	677
-TEXAS	4,479	0	0	4,479
GTE NORTHWEST :	0	0	614	614
-IDAHO	0	0	13	13
-MONTANA	0	0	42	42
-OREGON	0	0	385	385
-WASHINGTON	0	0	175	175
GTE - CALIFORNIA	0	0	0	0
GTE - FLORIDA	0	0	2,634	2,634
GTE - HAWAII	0	0	23	23
XI- UNITED INTERMOUNTAIN :	0	0	0	0
-TENNESSEE	0	0	0	0
-VIRGINIA	0	0	0	0
XII- SOUTHERN NEW ENGLAND TEL	0	0	0	0
XIII-CENTEL OF FLORIDA :	4,165	0	40	4,205

UNSEPARATED DEPRECIATION EXPENSE DISALLOWANCE

($ 0 0 0)

	RATE ANALYSIS (A)	STATION CONNECTION AMORTIZATION (B)	PLANT DISALLOWANCE (C)	TOTAL (D=A+B+C)
TOTAL BOC	250,324	1,494	67,277	319,095
TOTAL GTE	12,438	0	5,112	17,550
TOTAL OTHERS	4,165	0	6,481	10,646
TOTAL INDUSTRY	266,927	1,494	78,871	347,292

Carrier Common Line
Minutes of Use Adjustments

Operating Company	TRP PYCOS	TRP Forecast	Trend Line PYCOS	Trend Line Forecast	95% confidence Interval of Trend Line		Trend Line +/- One Standard Deviation	
					Lower Bound	Upper Bound	Lower Bound	Upper Bound
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
LBIL	11,065,245	12,705,832	11,120,993	13,173,188	12,824,348	13,522,029	12,999,636	13,346,741
NBIN	3,359,501	3,861,219	3,357,826	3,942,963	3,761,756	4,124,170	3,852,810	4,033,116
MBMI	6,749,044	7,700,699	6,738,486	7,933,325	7,638,527	8,228,122	7,786,659	8,079,990
OBOH	5,785,502	6,427,085	5,806,067	6,697,691	6,371,183	7,024,199	6,535,249	6,860,133
WTWI	3,186,583	3,612,188	3,198,757	3,694,578	3,537,745	3,851,412	3,616,552	3,772,605
CPTC	16,012,390	18,103,336	16,067,907	18,791,963	17,753,063	19,830,863	18,275,097	19,308,828
DSDE	1,277,368	1,428,591	1,259,601	1,463,757	1,347,143	1,580,371	1,405,740	1,521,774
PAPA	10,129,332	11,303,075	10,066,989	11,581,378	10,790,223	12,372,532	11,187,768	11,974,987
NJNJ	13,686,039	16,127,291	13,773,008	15,820,991	14,874,764	16,767,217	15,350,231	16,291,750
SBTC	24,455,335	28,108,076	24,396,939	28,713,472	27,996,051	29,430,894	28,356,546	29,070,399
SCTC	15,275,448	16,980,641	15,253,221	17,914,725	17,503,892	18,325,558	17,710,331	18,119,120
NETC	13,772,012	15,307,032	13,849,634	16,129,067	15,792,743	16,465,392	15,961,742	16,296,393
NYNY	22,120,138	24,045,264	22,230,921	25,423,172	24,927,970	25,918,374	25,176,803	25,669,541
PTCA	20,395,594	23,475,543	20,466,461	24,406,153	23,797,897	25,014,410	24,103,538	24,708,769
PTNV	681,886	751,647	673,988	796,104	751,921	840,286	774,123	818,085
SWTR	23,304,610	25,664,980	23,314,295	26,999,654	26,323,956	27,675,352	26,663,486	27,335,822
MSTC	15,230,955	17,277,805	15,140,638	17,499,758	16,583,454	18,416,063	17,043,886	17,955,631
NWTC	7,793,049	8,971,879	7,964,389	9,176,623	8,613,671	9,739,575	8,896,548	9,456,699
PNTC	6,099,222	7,173,533	6,182,636	7,192,580	6,713,728	7,671,432	6,954,345	7,430,815
CEFL	537,291	674,393	549,065	621,849	578,598	665,100	600,331	643,367
CENV	1,353,105	1,515,287	1,353,024	1,617,555	1,535,593	1,699,517	1,576,778	1,658,332
CBTC	1,548,165	1,772,690	1,541,982	1,785,060	1,712,121	1,857,999	1,748,772	1,821,348
COCA	416,462	491,311	400,840	507,413	488,454	526,372	497,981	516,845
CONY	373,756	421,958	370,836	437,689	425,663	449,716	431,706	443,673
COTX	161,562	207,501	159,755	186,390	180,616	192,164	183,517	189,262
COVA	891,197	1,097,595	875,702	1,076,966	1,037,302	1,116,630	1,057,233	1,096,700
GTCA	4,835,399	5,799,522	4,804,799	5,922,541	5,781,234	6,063,848	5,852,239	5,992,843
GTFL	3,672,031	4,226,554	3,667,300	4,269,904	4,066,172	4,473,637	4,168,545	4,371,264
GTNW	1,830,736	2,300,557	1,778,956	2,139,509	2,040,090	2,238,927	2,090,047	2,188,971
GTSO	2,217,278	2,644,105	2,166,062	2,564,285	2,412,356	2,716,215	2,488,699	2,639,872
GTSW	2,080,289	2,714,374	2,118,552	2,497,838	2,363,471	2,632,205	2,430,989	2,564,687
GTMW	5,144,304	5,986,279	5,021,770	5,743,775	5,388,880	6,098,670	5,567,210	5,920,339
GTHI	1,157,776	1,437,197	1,116,016	1,317,969	1,251,634	1,384,304	1,284,966	1,350,972
LTNE	398,453	467,583	395,004	463,669	450,627	476,712	457,181	470,158
RTNY	817,836	931,035	812,139	957,224	924,122	990,325	940,755	973,692
SNCT	5,129,381	5,655,928	5,128,360	5,852,886	5,556,013	6,149,760	5,705,188	6,000,585
UTFL	2,269,055	2,733,149	2,268,070	2,750,627	2,638,332	2,862,922	2,694,759	2,806,495
UTIN	271,131	331,059	264,855	310,831	290,185	331,477	300,559	321,103
UTNC	1,567,253	1,805,133	1,558,832	1,821,801	1,754,190	1,889,412	1,788,164	1,855,438
UTOH	735,241	828,002	727,476	880,587	829,367	931,808	855,105	906,070
UTPA	452,877	515,340	452,620	548,029	526,253	569,805	537,195	558,863
UTIM	532,667	615,565	542,462	647,503	624,616	670,390	636,117	658,890
total	258,772,498	294,197,833	258,937,235	302,273,045	297,438,545	307,107,546	299,867,821	304,678,269
Sum of OPCOs	258,772,498	294,197,833	258,937,235	302,273,045				

NOTES: (1) CCLMOU data are from DMD-1, rows 100 thru 295, column (I) in the 1990 TRP for October 1986 thru December 1989 and for the prospective period, and from rows 100 thru 230, column (I) in the 1989 TRP for July 1984 1984 thru September 1986.

Carrier Common Line
Minutes of Use Adjustments

Annualized Growth Rates

Operating Company	TRP Forecast Over TRP PYCOS (I)	Trend Forecast Over TRP PYCOS (J)	Trend Forecast Over Trend PYCOS (K)	95% CI Lower Bound Over TRP PYCOS (L)	95% CI Upper Bound Over TRP PYCOS (M)	+/- 1 SD Lower Bound Over TRP PYCOS (N)	+/- 1 SD Upper Bound Over TRP PYCOS (O)
LBIL	9.65%	12.33%	11.95%	10.34%	14.30%	11.34%	13.31%
NBIN	9.72%	11.27%	11.30%	7.83%	14.65%	9.56%	12.96%
MBMI	9.19%	11.38%	11.50%	8.60%	14.12%	10.00%	12.75%
OBOH	7.26%	10.25%	9.99%	6.64%	13.81%	8.46%	12.03%
WTWI	8.72%	10.36%	10.08%	7.22%	13.47%	8.80%	11.91%
CPTC	8.53%	11.26%	11.00%	7.12%	15.33%	9.21%	13.29%
DSDE	7.74%	9.51%	10.53%	3.61%	15.25%	6.59%	12.38%
PAPA	7.58%	9.34%	9.79%	4.30%	14.27%	6.85%	11.81%
NJNJ	11.56%	10.15%	9.68%	5.71%	14.50%	7.95%	12.32%
SBTC	9.72%	11.29%	11.47%	9.43%	13.14%	10.37%	12.22%
SCTC	7.31%	11.21%	11.32%	9.50%	12.90%	10.36%	12.05%
NETC	7.30%	11.11%	10.69%	9.56%	12.65%	10.34%	11.87%
NYNY	5.72%	9.72%	9.36%	8.29%	11.14%	9.01%	10.43%
PTCA	9.83%	12.71%	12.45%	10.83%	14.58%	11.78%	13.64%
PTNV	6.71%	10.88%	11.74%	6.74%	14.94%	8.83%	12.91%
SWTR	6.64%	10.31%	10.28%	8.46%	12.14%	9.39%	11.22%
MSTC	8.77%	9.70%	10.13%	5.84%	13.50%	7.79%	11.60%
NWTC	9.85%	11.51%	9.91%	6.90%	16.03%	9.23%	13.77%
PNTC	11.42%	11.62%	10.61%	6.61%	16.52%	9.14%	14.07%
CEFL	16.36%	10.23%	8.65%	5.06%	15.29%	7.68%	12.76%
CENV	7.84%	12.64%	12.64%	8.80%	16.41%	10.74%	14.52%
CBTC	9.45%	9.96%	10.25%	6.94%	12.93%	8.46%	11.44%
COCA	11.65%	14.08%	17.02%	11.22%	16.90%	12.66%	15.48%
CONY	8.42%	11.10%	11.68%	9.06%	13.13%	10.09%	12.11%
COTX	18.16%	10.00%	10.83%	7.72%	12.26%	8.87%	11.13%
COVA	14.90%	13.45%	14.79%	10.65%	16.22%	12.06%	14.84%
GTCA	12.89%	14.48%	14.96%	12.65%	16.29%	13.57%	15.38%
GTFL	9.83%	10.58%	10.67%	7.03%	14.07%	8.82%	12.32%
GTNW	16.45%	10.95%	13.09%	7.49%	14.36%	9.23%	12.65%
GTSO	12.45%	10.18%	11.91%	5.78%	14.49%	8.00%	12.33%
GTSW	19.41%	12.97%	11.60%	8.88%	16.99%	10.94%	14.98%
GTNW	10.63%	7.63%	9.37%	3.14%	12.01%	5.41%	9.82%
GTHI	15.50%	9.02%	11.73%	5.33%	12.65%	7.20%	10.84%
LTNE	11.26%	10.63%	11.28%	8.55%	12.70%	9.60%	11.66%
RTNY	9.03%	11.06%	11.58%	8.49%	13.61%	9.78%	12.33%
SNCT	6.73%	9.20%	9.21%	5.47%	12.86%	7.35%	11.02%
UTFL	13.21%	13.69%	13.72%	10.57%	16.76%	12.15%	15.22%
UTIN	14.24%	9.54%	11.26%	4.63%	14.34%	7.11%	11.94%
UTNC	9.88%	10.55%	10.95%	7.80%	13.27%	9.19%	11.91%
UTOH	8.24%	12.78%	13.58%	8.36%	17.11%	10.59%	14.94%
UTPA	9.00%	13.56%	13.60%	10.53%	16.55%	12.06%	15.05%
UTIM	10.12%	13.90%	12.52%	11.20%	16.57%	12.56%	15.23%
total	8.93%	10.91%	10.87%	9.73%	12.09%	10.33%	11.50%
SUM OF OPCOS	8.93%	10.91%	10.87%				

NOTES: (1) The growth rates in columns (I) thru (O) are annualized by raising the ratio of the value listed in the column heading to the 2/3 power, and subtracting one. For example, column (I) equals ((column (B) / column (A)) ^ (2/3)) - 1.

Carrier Common Line
Minutes of Use Adjustments

Operating Company	Fail Report Card?	Tentative CCLMOU Adjustment	Final CCLMOU Adjustment	Percent of TRP Forecast Which Is Adjust-ment
	(P)	(Q)	(R)	(S)
LBIL	Yes	293,804	293,804	2.31%
NBIN	Yes			
MBMI	Yes	85,960	85,960	1.12%
OBOH	Yes	108,164	108,164	1.68%
WTWI	Yes	4,364	4,364	0.12%
CPTC	Yes	171,761	171,761	0.95%
DSDE	Yes			
PAPA	Yes			
NJNJ	No			
SBTC	Yes	248,470	248,470	0.88%
SCTC	Yes	729,690	729,690	4.30%
NETC	Yes	654,710	654,710	4.28%
NYNY	No	882,706	882,706	3.67%
PTCA	Yes	627,995	627,995	2.68%
PTNV	Yes	22,476	22,476	2.99%
SWTR	Yes	998,506	312,606	1.22%
MSTC	Yes			
NWTC	Yes			
PNTC	Yes			
CEFL	Yes			
CENV	No	20,306	20,306	1.34%
CBTC	Yes			
COCA	Yes	6,670	0	0.00%
CONY	Yes	9,748	0	0.00%
COTX	Yes			
COVA	Yes			
GTCA	Yes	52,717	52,717	0.91%
GTFL	No			
GTNW	Yes			
GTSO	Yes			
GTSW	No			
GTMW	No			
GTHI	Yes			
LTNE	Yes			
RTNY	Yes	9,720	9,720	1.04%
SNCT	No			
UTFL	No			
UTIN	Yes			
UTNC	Yes			
UTOH	Yes	27,103	9,404	1.14%
UTPA	Yes	21,855	0	0.00%
UTIM	Yes	20,552	14,617	2.37%
total Sum of OPCOs	Yes	4,997,276	4,249,469	1.44%

NOTES: Column (Q) is: the lower bound of the 95% confidence interval minus the TRP forecast, if the company passes its report card; the lower bound of the trend +/- one standard deviation minus the TRP forecast, if the company fails its report card; and is blank otherwise.

Carrier Common Line
Minutes of Use Adjustments

NOTES: Column (R) reflects the following adjustments:
(1) SWTR disallowance is reduced by the amount of FGA and FGB minutes reported in SWTR's Reply.
(2) COCA, CONY, and UTPA disallowances are reduced to zero because of the switch from STARS to JTSS.
(3) UTOH and UTIM have their disallowances reduced because of the switch from STARS to JTSS. The reduction is computed from the amounts reported in United's Reply, Att. A, Col C and Col A. The ratio Col C / Col A is multiplied by the Trend Line forecast to determine the reduction.

Carrier Common Line
Minutes of Use Adjustments

Operating Company	TRP Forecast	Final CCLMOU Adjustment	Adjusted Forecast CCLMOU Demand	Adjustment Factor for Stimulation	Adjusted Stimulated CCLMOU	Final CCLMOU Adjustment Including Demand Stimulation
	(T)	(U)	(V)	(W)	(X)	(Y)
LBIL	12,705,832	293,804	12,999,636	1.00776	13,100,448	394,616
NBIN	3,861,219		3,861,219	1.00776	3,891,163	29,944
MBMI	7,700,699	85,960	7,786,659	1.00776	7,847,045	146,346
OBOH	6,427,085	108,164	6,535,249	1.00776	6,585,930	158,845
WTWI	3,612,188	4,364	3,616,552	1.00776	3,644,598	32,410
CPTC	18,103,336	171,761	18,275,097	1.00776	18,416,821	313,485
DSDE	1,428,591		1,428,591	1.00776	1,439,670	11,079
PAPA	11,303,075		11,303,075	1.00776	11,390,730	87,655
NJNJ	16,127,291		16,127,291	1.00776	16,252,358	125,067
SBTC	28,108,076	248,470	28,356,546	1.00776	28,576,451	468,375
SCTC	16,980,641	729,690	17,710,331	1.00776	17,847,674	867,033
NETC	15,307,032	654,710	15,961,742	1.00776	16,085,525	778,493
NYNY	24,045,264	882,706	24,927,970	1.00776	25,121,286	1,076,022
PTCA	23,475,543	627,995	24,103,538	1.00776	24,290,461	814,918
PTNV	751,647	22,476	774,123	1.00776	780,126	28,479
SWTR	25,664,980	312,606	25,977,586	1.00776	26,179,042	514,062
MSTC	17,277,805		17,277,805	1.00776	17,411,794	133,989
NWTC	8,971,879		8,971,879	1.00776	9,041,456	69,577
PNTC	7,173,533		7,173,533	1.00776	7,229,164	55,631
CEFL	674,393		674,393	1.00776	679,623	5,230
CENV	1,515,287	20,306	1,535,593	1.00776	1,547,501	32,214
CBTC	1,772,690		1,772,690	1.00776	1,786,437	13,747
COCA	491,311	0	491,311	1.00776	495,121	3,810
CONY	421,958	0	421,958	1.00776	425,230	3,272
COTX	207,501		207,501	1.00776	209,110	1,609
COVA	1,097,595		1,097,595	1.00776	1,106,107	8,512
GTCA	5,799,522	52,717	5,852,239	1.00776	5,897,623	98,101
GTFL	4,226,554		4,226,554	1.00776	4,259,331	32,777
GTNW	2,300,557		2,300,557	1.00776	2,318,398	17,841
GTSO	2,644,105		2,644,105	1.00776	2,664,610	20,505
GTSW	2,714,374		2,714,374	1.00776	2,735,424	21,050
GTNW	5,986,279		5,986,279	1.00776	6,032,703	46,424
GTHI	1,437,197		1,437,197	1.00776	1,448,342	11,145
LTNE	467,583		467,583	1.00776	471,209	3,626
RTNY	931,035	9,720	940,755	1.00776	948,051	17,016
SNCT	5,655,928		5,655,928	1.00776	5,699,790	43,862
UTFL	2,733,149		2,733,149	1.00776	2,754,345	21,196
UTIN	331,059		331,059	1.00776	333,626	2,567
UTNC	1,805,133		1,805,133	1.00776	1,819,132	13,999
UTOH	828,002	9,404	837,406	1.00776	843,900	15,898
UTPA	515,340	0	515,340	1.00776	519,336	3,996
UTIM	615,565	14,617	630,182	1.00776	635,069	19,504
total	294,197,833					
Sum of OPCOs	294,197,833	4,249,469	298,447,302	1.00776	300,761,761	6,563,928

NOTES: (1) Column (V) is Column (T) + Column (U).
(2) Column (W) is computed assuming a price elasticity of -0.47
(3) Column (X) is Column (V) * Column (W).
(4) Column (Y) is Column (X) - Column (T).

Traffic Sensitive - Switched
Minutes of Use Adjustments

Operating Company	TRP PYCOS	TRP Forecast	Trend Line PYCOS	Trend Line Forecast	95% confidence Interval of Trend Line		Trend Line +/- One Standard Deviation	
					Lower Bound	Upper Bound	Lower Bound	Upper Bound
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
LBIL	11,969,959	13,236,619	12,106,116	13,801,470	13,210,486	14,392,454	13,530,252	14,072,688
NBIN	3,684,802	4,156,976	3,728,209	4,350,404	4,123,236	4,577,573	4,246,151	4,454,658
MBMI	7,069,039	7,963,494	7,086,172	8,099,127	7,845,751	8,352,504	7,982,846	8,215,408
OBOH	6,310,529	6,815,603	6,312,181	6,926,729	6,676,961	7,176,498	6,812,104	7,041,355
WTWI	3,391,386	3,723,904	3,423,730	3,848,487	3,735,831	3,961,143	3,796,786	3,900,188
CPTC	17,580,093	18,774,281	17,579,647	20,082,144	18,369,885	21,794,403	19,296,343	20,867,944
DSDE	1,410,283	1,525,422	1,432,331	1,659,174	1,454,204	1,864,144	1,565,108	1,753,240
PAPA	11,098,172	12,000,409	11,300,830	12,999,209	11,519,348	14,479,071	12,320,062	13,678,356
NJNJ	14,850,024	16,887,750	14,993,846	16,805,225	15,645,899	17,964,551	16,273,180	17,337,270
SBTC	26,155,892	28,869,461	26,079,580	29,754,667	28,638,447	30,870,887	29,242,404	30,266,929
SCTC	15,822,275	17,462,501	15,808,075	17,867,915	17,301,588	18,434,242	17,608,012	18,127,817
NETC	14,720,560	15,788,294	14,840,897	16,760,409	16,297,698	17,223,120	16,548,059	16,972,759
NYNY	23,195,379	24,632,114	23,287,744	25,785,645	25,281,239	26,290,051	25,554,160	26,017,130
PTCA	21,877,838	24,470,286	21,931,616	25,574,620	24,722,978	26,426,262	25,183,779	25,965,461
PTNV	732,291	816,544	725,463	817,869	769,257	866,481	795,560	840,178
SWTR	24,727,884	26,555,080	24,622,845	27,444,982	26,466,272	28,423,693	26,995,826	27,894,138
MSTC	15,883,083	17,697,998	15,744,771	17,434,049	16,720,057	18,148,042	17,106,379	17,761,719
NWTC	8,635,191	9,365,168	8,693,686	9,431,643	8,965,371	9,897,915	9,217,659	9,645,627
PNTC	6,521,272	7,361,025	6,464,448	7,286,147	6,985,167	7,587,127	7,148,020	7,424,275
CEFL	601,528	688,296	599,343	697,414	663,174	731,653	681,700	713,127
CENV	1,402,465	1,571,988	1,372,037	1,557,743	1,465,205	1,650,281	1,515,275	1,600,211
CBTC	1,681,951	1,861,218	1,664,394	1,839,497	1,749,578	1,929,415	1,798,231	1,880,762
COCA	423,048	499,749	409,110	517,316	474,725	559,907	497,770	536,862
CONY	381,833	430,218	379,452	446,371	422,816	469,926	435,561	457,181
COTX	162,519	209,002	160,662	186,450	176,019	196,882	181,663	191,238
COVA	900,946	1,110,767	889,435	1,095,406	1,036,878	1,153,934	1,068,546	1,122,266
GTCA	5,007,579	5,892,522	4,995,799	6,064,171	5,952,831	6,175,511	6,013,074	6,115,268
GTFL	3,788,260	4,338,997	3,770,581	4,273,786	3,916,743	4,630,829	4,109,930	4,437,643
GTNW	1,955,277	2,352,912	1,908,057	2,290,763	2,170,269	2,411,258	2,235,465	2,346,061
GTSO	2,311,886	2,728,288	2,282,825	2,645,440	2,433,669	2,857,212	2,548,253	2,742,628
GTSW	2,430,810	2,783,799	2,366,070	2,871,891	2,686,452	3,057,330	2,786,788	2,956,993
GTMW	5,475,133	6,165,407	5,404,009	6,165,383	5,742,707	6,588,059	5,971,406	6,359,360
GTHI	1,203,313	1,464,940	1,161,867	1,375,624	1,243,945	1,507,302	1,315,193	1,436,054
LTNE	425,902	481,033	420,294	484,043	460,732	507,353	473,345	494,741
RTNY	840,919	943,535	829,224	950,516	911,347	989,686	932,541	968,492
SNCT	5,608,087	5,911,420	5,609,331	6,266,544	6,085,075	6,448,013	6,183,263	6,349,825
UTFL	2,331,202	2,769,112	2,315,839	2,757,420	2,406,223	3,108,618	2,596,246	2,918,594
UTIN	295,567	346,063	284,756	335,018	296,355	373,682	317,275	352,762
UTNC	1,618,089	1,849,100	1,611,566	1,853,385	1,736,948	1,969,822	1,799,949	1,906,821
UTOH	747,970	849,545	742,826	875,557	798,342	952,772	840,121	910,993
UTPA	469,940	527,288	471,221	558,034	526,424	589,644	543,528	572,541
UTIM	564,498	638,431	574,661	666,784	632,122	701,445	650,877	682,690
total	276,264,674	304,516,559	276,385,549	313,504,472	309,669,350	317,339,593	311,744,434	315,264,509
Sum of OPCOs	276,264,674	304,516,559	276,385,549	313,504,472				

NOTES: (1) TSMOU data are from DMD-1,rows 610 thru 670, column (C) in the 1990 TRP for 1Q 1987 thru 4Q 1989 and for the prospective period, and from rows 750 and 760, column (C) in DMD-1 in the 1988 TRP for 3Q and 4Q 1986.

Traffic Sensitive - Switched
Minutes of Use Adjustments

Annualized Growth Rates

Operating Company	TRP Forecast Over TRP PYCOS (I)	Trend Forecast Over TRP PYCOS (J)	Trend Forecast Over Trend PYCOS (K)	95% CI Lower Bound Over TRP PYCOS (L)	95% CI Upper Bound Over TRP PYCOS (M)	+/- 1 SD Lower Bound Over TRP PYCOS (N)	+/- 1 SD Upper Bound Over TRP PYCOS (O)
LBIL	6.94%	9.96%	9.13%	6.79%	13.07%	8.51%	11.39%
NBIN	8.37%	11.71%	10.84%	7.78%	15.56%	9.91%	13.48%
NBMI	8.27%	9.49%	9.32%	7.20%	11.76%	8.44%	10.54%
OBOH	5.27%	6.41%	6.39%	3.83%	8.95%	5.23%	7.58%
WTWI	6.43%	8.79%	8.11%	6.66%	10.91%	7.82%	9.77%
CPTC	4.48%	9.28%	9.28%	2.97%	15.40%	6.41%	12.11%
DSDE	5.37%	11.44%	10.30%	2.07%	20.44%	7.19%	15.62%
PAPA	5.35%	11.12%	9.78%	2.51%	19.40%	7.21%	14.95%
NJNJ	8.95%	8.60%	7.90%	3.54%	13.53%	6.29%	10.88%
SBTC	6.80%	8.97%	9.19%	6.23%	11.68%	7.72%	10.22%
SCTC	6.80%	8.44%	8.51%	6.14%	10.72%	7.39%	9.49%
NETC	4.78%	9.04%	8.45%	7.02%	11.03%	8.11%	9.96%
NYNY	4.09%	7.31%	7.03%	5.91%	8.71%	6.67%	7.95%
PTCA	7.75%	10.97%	10.79%	8.49%	13.42%	9.84%	12.10%
PTNV	7.53%	7.65%	8.32%	3.34%	11.87%	5.68%	9.60%
SWTR	4.87%	7.20%	7.50%	4.63%	9.73%	6.02%	8.36%
MSTC	7.48%	6.41%	7.03%	3.48%	9.29%	5.07%	7.74%
NWTC	5.56%	6.06%	5.58%	2.53%	9.53%	4.45%	7.66%
PNTC	8.41%	7.67%	8.30%	4.69%	10.62%	6.31%	9.03%
CEFL	9.40%	10.36%	10.63%	6.72%	13.95%	8.70%	12.01%
CENV	7.90%	7.25%	8.83%	2.96%	11.46%	5.29%	9.19%
CBTC	6.98%	6.15%	6.90%	2.66%	9.58%	4.56%	7.73%
COCA	11.75%	14.35%	16.93%	7.99%	20.55%	11.45%	17.21%
CONY	8.28%	10.97%	11.44%	7.03%	14.84%	9.17%	12.76%
COTX	18.26%	9.59%	10.43%	5.46%	13.64%	7.71%	11.46%
COVA	14.98%	13.92%	14.90%	9.82%	17.94%	12.05%	15.77%
GTCA	11.46%	13.61%	13.79%	12.22%	15.00%	12.97%	14.25%
GTFL	9.47%	8.37%	8.71%	2.25%	14.33%	5.58%	11.12%
GTNW	13.14%	11.13%	12.96%	7.20%	15.00%	9.34%	12.92%
GTSO	11.67%	9.40%	10.33%	3.48%	15.16%	6.70%	12.06%
GTSW	9.46%	11.76%	13.79%	6.89%	16.52%	9.54%	13.95%
GTNW	8.24%	8.24%	9.18%	3.23%	13.13%	5.95%	10.50%
GTHI	14.01%	9.33%	11.92%	2.24%	16.20%	6.11%	12.51%
LTNE	8.45%	8.91%	9.87%	5.38%	12.37%	7.29%	10.50%
RTNY	7.98%	8.51%	9.53%	5.51%	11.47%	7.14%	9.87%
SNCT	3.57%	7.68%	7.67%	5.59%	9.75%	6.73%	8.63%
UTFL	12.16%	11.84%	12.34%	2.13%	21.15%	7.44%	16.16%
UTIN	11.09%	8.71%	11.45%	0.18%	16.92%	4.84%	12.52%
UTNC	9.30%	9.47%	9.77%	4.84%	14.01%	7.36%	11.57%
UTOH	8.86%	11.07%	11.58%	4.44%	17.51%	8.05%	14.05%
UTPA	7.98%	12.14%	11.93%	7.86%	16.33%	10.18%	14.07%
UTIM	8.55%	11.74%	10.42%	7.83%	15.58%	9.96%	13.51%
total	6.71%	8.80%	8.76%				
SUM OF OPCOS	6.71%	8.80%	8.76%				

NOTES: (1) The growth rates in columns (I) thru (O) are annualized by raising the ratio of the value listed in the column heading to the 2/3 power, and subtracting one. For example, column (I) equals ((column (B) / column (A)) ^ (2/3)) - 1.

Traffic Sensitive - Switched
Minutes of Use Adjustments

Operating Company	Fail Report Card? (P)	Tentative TSMOU Adjustment (Q)	Final TSMOU Adjustment (R)	Percent of TRP Forecast Which Is Adjust-ment (S)	TS RAF (T)
LBIL	No				
NBIN	Yes	89,175	89,175	2.15%	99.66%
NBMI	Yes	19,352	19,352	0.24%	99.96%
OBOH	No				
WTWI	No	11,927	11,927	0.32%	99.95%
CPTC	Yes	522,062	522,062	2.78%	99.56%
DSDE	Yes	39,686	39,686	2.60%	99.58%
PAPA	Yes	319,653	319,653	2.66%	99.57%
NJNJ	No				
SBTC	Yes	372,943	372,943	1.29%	99.79%
SCTC	No				
NETC	Yes	759,765	759,765	4.81%	99.23%
NYNY	No	649,125	649,125	2.64%	99.58%
PTCA	No	252,692	252,692	1.03%	99.83%
PTNV	No				
SWTR	No				
MSTC	No				
NWTC	No				
PNTC	No				
CEFL	Yes				
CENV	No				
CBTC	No				
COCA	Yes				
CONY	Yes	5,343		0.00%	
COTX	Yes				
COVA	Yes				
GTCA	No	60,309	60,309	1.02%	99.94%
GTFL	No				
GTNW	Yes				
GTSO	No				
GTSW	No				
GTMW	No				
GTHI	Yes				
LTNE	Yes				
RTNY	No				
SNCT	No	173,655	173,655	2.94%	99.53%
UTFL	No				
UTIN	No				
UTNC	Yes				
UTOH	Yes				
UTPA	Yes	16,240		0.00%	
UTIM	Yes	12,446	6,553	1.03%	99.84%
total Sum of OPCOs	No	3,304,373	3,276,898	1.08%	

NOTES: (1) Column (Q) is: the upper bound of the 95% confidence interval minus the TRP forecast, if the company passes its report card; the upper bound of the trend +/- one standard deviation, if the company fails its report card; and is blank otherwise.

Traffic Sensitive - Switched
Minutes of Use Adjustments

NOTES: (1) Column (R) reflects the following adjustments:
(1) SWTR adjustment is reduced by 213.8 million due to a reduction in the historical base reported in its Reply, page 38.
(2) COCA, CONY, and UTPA disallowances are reduced to zero because of the switch from STARS to JTSS.
(3) UTIM disallowance is reduced because of the switch from STARS to JTSS. The reduction is computed from the amounts reported in United's Reply, Att. A, Col C and Col A. The ratio Col C / Col A is multiplied by the Trend Line forecast to determine the reduction.
(2) Column (T) is 1 - (0.16 * column (S))

MASTER

REVENUE REQUIREMENT DISALLOWANCES

MASTER REVENUE REQUIREMENT DISALLOWANCE CHART ($ TO NEAREST THOUSAND)		OPERATING COMPANY TOTALS COMMON LINE	TS SWITCHED	SPECIAL ACCESS	TOTAL		PROSPECTIVE TOTAL ACCESS REVENUE RECURRING TRP SOURCE: (REV2 R.120/C.H)	PERCENT D / E
		A	B	C	D		E	F
** TOTAL ALL OPERATING COMPANIES	TOTL	$277,398	$203,721	$56,730	$537,849	TOTL	$19,269,328	2.79%
1 ILLINOIS BELL	LBIL	$4,985	$1,220	$850	$7,056	LBIL	753,033	0.94%
2 INDIANA BELL	NBIN	$3,736	$2,567	$1,041	$7,344	NBIN	244,565	3.00%
3 MICHIGAN BELL	MBMI	$7,148	$2,612	$862	$10,623	MBMI	521,331	2.04%
4 OHIO BELL	OBOH	$3,615	$856	$494	$4,965	OBOH	426,228	1.16%
5 WISCONSIN BELL	WTWI	$208	$16	$5	$229	WTWI	227,962	0.10%
6 CHESAPEAKE & POTOMAC	CPTC	$8,083	$2,956	$1,470	$12,509	CPTC	1,102,559	1.13%
7 DIAMOND STATE TEL.	DSDE	$372	$6	$6	$384	DSDE	68,129	0.56%
8 BELL OF PENNSYLVANIA	PAPA	$7,225	$68	$60	$7,352	PAPA	703,259	1.05%
9 NEW JERSEY BELL	NJNJ	$6,414	$1,459	$536	$8,409	NJNJ	795,160	1.06%
10 SOUTHERN BELL	SBTC	$10,196	$1,173	$1,191	$12,561	SBTC	1,657,322	0.76%
11 SOUTH CENTRAL BELL	SCTC	$13,102	$10,625	$3,067	$26,795	SCTC	1,086,150	2.47%
12 NEW ENGLAND TELEPHONE	NETC	$39,773	$46,483	$7,388	$93,644	NETC	1,051,233	8.91%
13 NEW YORK TELEPHONE	NYNY	$49,417	$42,117	$13,287	$104,822	NYNY	2,004,003	5.23%
14 PACIFIC BELL	PTCA	$66,949	$22,012	$9,051	$98,012	PTCA	1,595,691	6.14%
15 NEVADA BELL	PTNV	$572	$405	$67	$1,044	PTNV	52,443	1.99%
16 SOUTHWESTERN BELL TEL. CO.	SWTR	$22,449	$16,982	$7,947	$47,378	SWTR	1,700,079	2.79%
17 MOUNTAIN BELL	MSTC	$3,856	$16,986	$2,250	$23,092	MSTC	1,065,527	2.17%
18 NORTHWESTERN BELL	NWTC	$2,020	$16,798	$2,345	$21,162	NWTC	551,702	3.84%
19 PACIFIC NORTHWEST BELL	PNTC	$2,157	$2,049	$251	$4,457	PNTC	401,911	1.11%
20 CENTRAL OF FLORIDA	CEFL	$791	$636	$186	$1,613	CEFL	26,159	6.17%
21 CENTRAL OF NEVADA	CENV	$811	$693	$109	$1,612	CENV	62,251	2.59%
22 CINCINNATI BELL TELEPHONE	CBTC	$983	$1,139	$651	$2,774	CBTC	106,324	2.61%
23 CONTEL OF CALIFORNIA	COCA	$1,058	$585	$105	$1,747	COCA	49,790	3.51%
24 CONTEL OF NEW YORK	CONY	$780	$397	$48	$1,226	CONY	36,556	3.35%
25 CONTEL OF TEXAS	COTX	$255	$310	$29	$594	COTX	29,288	2.03%
26 CONTEL OF VIRGINIA	COVA	$2,128	$1,224	$169	$3,521	COVA	61,304	5.74%
27 GTE CALIFORNIA, INC.	GTCA	$5,707	$3,876	$1,079	$10,663	GTCA	481,048	2.22%
28 GTE FLORIDA, INC.	GTFL	$2,638	$239	$155	$3,031	GTFL	276,067	1.10%
29 GTE NORTHWEST, INC.	GTNW	$906	$323	$90	$1,319	GTNW	184,074	0.72%
30 GTE SOUTH, INC.	GTSO	$2,130	$1,148	$245	$3,523	GTSO	214,562	1.64%
31 GTE SOUTHWEST, INC.	GTSW	$1,327	$777	$172	$2,276	GTSW	227,261	1.00%
32 GTE NORTH, INC.	GTMW	$1,836	$1,186	$327	$3,348	GTMW	511,304	0.65%
33 GTE HAWAIIAN, INC.	GTHI	$30	$36	$8	$74	GTHI	112,402	0.07%
34 LINCOLN TELEPHONE COMPANY	LTNE	$196	$320	$94	$611	LTNE	34,912	1.75%
35 ROCHESTER TELEPHONE CORPORATION	RTNY	$505	$300	$207	$1,012	RTNY	53,614	1.89%
36 SOUTHERN NEW ENGLAND TELEPHONE	SNCT	$1,330	$1,488	$371	$3,190	SNCT	332,872	0.96%
37 UNITED OF FLORIDA	UTFL	$552	$812	$270	$1,634	UTFL	198,218	0.82%
38 UNITED OF INDIANA	UTIN						31,113	
39 CAROLINA TEL. & TEL.	UTNC	$318	$184	$40	$542	UTNC	101,653	0.53%
40 UNITED OF OHIO	UTOH	$488	$385	$134	$1,007	UTOH	66,988	1.50%
41 UNITED OF PENN.	UTPA	$156	$156	$32	$344	UTPA	31,621	1.09%
42 UNITED INTER-MOUNTAIN	UTIM	$195	$116	$40	$351	UTIM	31,661	1.11%
		HOLDING COMPANY TOTALS						
** TOTAL ALL HOLDING COMPANIES		$277,398	$203,721	$56,730	$537,849		$19,269,328	2.79%
1 AMERITECH		$19,693	$7,271	$3,252	$30,216		$2,173,119	1.39%
2 BELL ATLANTIC		$22,093	$4,489	$2,071	$28,654		$2,669,107	1.07%
3 BELL SOUTH		$23,298	$11,799	$4,258	$39,355		$2,743,472	1.43%
4 NYNEX		$89,190	$88,600	$20,675	$198,466		$3,055,236	6.50%
5 PACIFIC TELESIS		$67,521	$22,417	$9,118	$99,056		$1,648,134	6.01%
6 SOUTHWESTERN BELL TEL. CO.		$22,449	$16,982	$7,947	$47,378		$1,700,079	2.79%
7 U.S. WEST		$8,032	$35,833	$4,846	$48,711		$2,019,139	2.41%
8 CENTRAL TELEPHONE CO.		$1,601	$1,329	$295	$3,225		$88,410	3.65%
9 CINCINNATI BELL TELEPHONE		$983	$1,139	$651	$2,774		$106,324	2.61%
10 CONTINENTAL TELEPHONE CO.		$4,221	$2,516	$351	$7,088		$176,938	4.01%
11 GTE		$14,574	$7,585	$2,076	$24,235		$2,006,718	1.21%
12 LINCOLN TELEPHONE CO.		$196	$320	$94	$611		$34,912	1.75%
13 ROCHESTER TELEPHONE CORP.		$505	$300	$207	$1,012		$53,614	1.89%
14 SOUTHERN NEW ENGLAND TELEPHONE		$1,330	$1,488	$371	$3,190		$332,872	0.96%
15 UNITED TELEPHONE SYSTEM		$1,709	$1,653	$517	$3,878		$461,254	0.84%

Summary Chart of Common Line Cost and Demand Adjustments

		COST ADJUSTMENT DOLLARS (000 OMITTED) A	DEMAND ADJUSTMENT MINUTES OF USE INCLUDING DEMAND STIMULATION (000 OMITTED) B	
**	TOTAL ALL OPERATING COMPANIES	$276,850	6,563,928	TOTL
1	ILLINOIS BELL	$4,985	394,616	LBIL
2	INDIANA BELL	$3,736	29,944	NBIN
3	MICHIGAN BELL	$7,148	146,346	MBMI
4	OHIO BELL	$3,615	158,845	OBOH
5	WISCONSIN BELL	$208	32,410	WTWI
6	CHESAPEAKE & POTOMAC	$8,084	313,485	CPTC
7	DIAMOND STATE TEL.	$372	11,079	DSDE
8	BELL OF PENNSYLVANIA	$7,225	87,655	PAPA
9	NEW JERSEY BELL	$6,414	125,067	NJNJ
10	SOUTHERN BELL	$10,196	468,375	SBTC
11	SOUTH CENTRAL BELL	$13,103	867,033	SCTC
12	NEW ENGLAND TELEPHONE	$39,773	778,493	NETC
13	NEW YORK TELEPHONE	$49,417	1,076,022	NYNY
14	PACIFIC BELL	$66,949	814,918	PTCA
15	NEVADA BELL	$572	28,479	PTNV
16	SOUTHWESTERN BELL TEL. CO.	$22,449	514,062	SWTR
17	MOUNTAIN BELL	$3,855	133,989	MSTC
18	NORTHWESTERN BELL	$2,020	69,577	NWTC
19	PACIFIC NORTHWEST BELL	$2,158	55,631	PNTC
20	CENTRAL OF FLORIDA	$790	5,230	CEFL
21	CENTRAL OF NEVADA	$288	32,214	CENV
22	CINCINNATI BELL TELEPHONE	$983	13,747	CBTC
23	CONTEL OF CALIFORNIA	$1,058	3,810	COCA
24	CONTEL OF NEW YORK	$780	3,272	CONY
25	CONTEL OF TEXAS	$255	1,609	COTX
26	CONTEL OF VIRGINIA	$2,129	8,512	COVA
27	GTE CALIFORNIA, INC.	$5,708	98,101	GTCA
28	GTE FLORIDA, INC.	$2,637	32,777	GTFL
29	GTE NORTHWEST, INC.	$905	17,841	GTNW
30	GTE SOUTH, INC.	$2,130	20,505	GTSO
31	GTE SOUTHWEST, INC.	$1,326	21,050	GTSW
32	GTE NORTH, INC.	$1,835	46,424	GTMW
33	GTE HAWAIIAN, INC.	$0	11,145	GTHI
34	LINCOLN TELEPHONE COMPANY	$211	3,626	LTNE
35	ROCHESTER TELEPHONE CORPORATION	$505	17,016	RTNY
36	SOUTHERN NEW ENGLAND TELEPHONE	$1,330	43,862	SNCT
37	UNITED OF FLORIDA	$552	21,196	UTFL
38	UNITED OF INDIANA	$0	2,567	UTIN
39	CAROLINA TEL. & TEL.	$318	13,999	UTNC
40	UNITED OF OHIO	$412	15,898	UTOH
41	UNITED OF PENN.	$155	3,996	UTPA
42	UNITED INTER-MOUNTAIN	$261	19,504	UTIM

**	TOTAL ALL HOLDING COMPANIES	$276,850	6,563,928
1	AMERITECH	$19,692	762,161
2	BELL ATLANTIC	$22,094	537,286
3	BELL SOUTH	$23,299	1,335,408
4	NYNEX	$89,190	1,854,516
5	PACIFIC TELESIS	$67,521	843,397
6	SOUTHWESTERN BELL TEL. CO.	$22,449	514,062
7	U.S. WEST	$8,033	259,197
8	CENTRAL TELEPHONE CO.	$1,079	37,444
9	CINCINNATI BELL TELEPHONE	$983	13,747
10	CONTINENTAL TELEPHONE CO.	$4,222	17,203
11	GTE	$14,542	247,843
12	LINCOLN TELEPHONE CO.	$211	3,626
13	ROCHESTER TELEPHONE CORP.	$505	17,016
14	SOUTHERN NEW ENGLAND TELEPHONE	$1,330	43,862
15	UNITED TELEPHONE SYSTEM	$1,699	77,160

Summary Chart of Traffic-Sensitive RAFs

	($ TO NEAREST THOUSAND)	COST ADJUSTMENT A	PROSPECTIVE TOTAL ACCESS REVENUE RECURRING TRP SOURCE: (REV2 R.12D/C.F) B	COST R A F C = 1 - (A / B)	DEMAND R A F D	FINAL R A F E = IF D = 0 THEN C ELSE (C x D)	
**	TOTAL ALL OPERATING COMPANIES	$203,084	$7,898,407				
1	ILLINOIS BELL	$1,221	301,637	0.9960		0.9960	LBIL
2	INDIANA BELL	$2,567	98,250	0.9739	0.9966	0.9705	NBIN
3	MICHIGAN BELL	$2,612	192,758	0.9864	0.9996	0.9861	MBMI
4	OHIO BELL	$856	162,776	0.9947		0.9947	OBOH
5	WISCONSIN BELL	$16	90,746	0.9998	0.9995	0.9993	WTWI
6	CHESAPEAKE & POTOMAC	$2,956	397,431	0.9926	0.9956	0.9881	CPTC
7	DIAMOND STATE TEL.	$6	24,427	0.9997	0.9958	0.9956	DSDE
8	BELL OF PENNSYLVANIA	$68	252,488	0.9997	0.9957	0.9955	PAPA
9	NEW JERSEY BELL	$1,460	335,957	0.9957		0.9957	NJNJ
10	SOUTHERN BELL	$1,174	537,562	0.9978	0.9979	0.9958	SBTC
11	SOUTH CENTRAL BELL	$10,626	427,274	0.9751		0.9751	SCTC
12	NEW ENGLAND TELEPHONE	$46,483	537,725	0.9136	0.9923	0.9065	NETC
13	NEW YORK TELEPHONE	$42,117	1,020,185	0.9587	0.9958	0.9547	NYNY
14	PACIFIC BELL	$22,013	550,489	0.9600	0.9983	0.9584	PTCA
15	NEVADA BELL	$405	24,553	0.9835		0.9835	PTNV
16	SOUTHWESTERN BELL TEL. CO.	$16,982	625,339	0.9728		0.9728	SWTR
17	MOUNTAIN BELL	$16,986	511,263	0.9668		0.9668	MSTC
18	NORTHWESTERN BELL	$16,797	280,791	0.9402		0.9402	NWTC
19	PACIFIC NORTHWEST BELL	$2,049	176,793	0.9884		0.9884	PNTC
20	CENTRAL OF FLORIDA	$637	12,843	0.9504		0.9504	CEFL
21	CENTRAL OF NEVADA	$242	26,331	0.9908		0.9908	CENV
22	CINCINNATI BELL TELEPHONE	$1,139	37,521	0.9696		0.9696	CBTC
23	CONTEL OF CALIFORNIA	$584	17,420	0.9665		0.9665	COCA
24	CONTEL OF NEW YORK	$398	14,432	0.9725		0.9725	CONY
25	CONTEL OF TEXAS	$310	9,026	0.9656		0.9656	COTX
26	CONTEL OF VIRGINIA	$1,224	25,278	0.9516		0.9516	COVA
27	GTE CALIFORNIA, INC.	$3,877	189,985	0.9796	0.9984	0.9780	GTCA
28	GTE FLORIDA, INC.	$238	96,491	0.9975		0.9975	GTFL
29	GTE NORTHWEST, INC.	$324	89,158	0.9964		0.9964	GTNW
30	GTE SOUTH, INC.	$1,147	95,338	0.9880		0.9880	GTSO
31	GTE SOUTHWEST, INC.	$778	99,598	0.9922		0.9922	GTSW
32	GTE NORTH, INC.	$1,186	218,674	0.9946		0.9946	GTMW
33	GTE HAWAIIAN, INC.	$0	52,349	1.0000		1.0000	GTHI
34	LINCOLN TELEPHONE COMPANY	$346	16,236	0.9787		0.9787	LTNE
35	ROCHESTER TELEPHONE CORPORATION	$299	18,595	0.9839		0.9839	RTNY
36	SOUTHERN NEW ENGLAND TELEPHONE	$1,488	156,169	0.9905	0.9953	0.9858	SNCT
37	UNITED OF FLORIDA	$813	73,745	0.9890		0.9890	UTFL
38	UNITED OF INDIANA		12,063	1.0000		1.0000	UTIN
39	CAROLINA TEL. & TEL.	$184	40,089	0.9954		0.9954	UTNC
40	UNITED OF OHIO	$169	26,253	0.9936		0.9936	UTOH
41	UNITED OF PENN.	$157	11,648	0.9866		0.9866	UTPA
42	UNITED INTER-MOUNTAIN	$152	10,721	0.9858	0.9984	0.9842	UTI.
**	TOTAL ALL HOLDING COMPANIES	$203,084	$7,898,407				
1	AMERITECH	$7,272	$846,167	0.9914	0.9992	0.9906	
2	BELL ATLANTIC	$4,490	$1,010,303	0.9956	0.9963	0.9919	
3	BELL SOUTH	$11,799	$964,836	0.9878	0.9984	0.9862	
4	NYNEX	$88,600	$1,557,910	0.9431	0.9940	0.9374	
5	PACIFIC TELESIS	$22,417	$575,042	0.9610	0.9975	0.9587	
6	SOUTHWESTERN BELL TEL. CO.	$16,982	$625,339	0.9728		0.9728	
7	U.S. WEST	$35,833	$968,847	0.9630		0.9630	
8	CENTRAL TELEPHONE CO.	$878	$39,174	0.9776		0.9776	
9	CINCINNATI BELL TELEPHONE	$1,139	$37,521	0.9696		0.9696	
10	CONTINENTAL TELEPHONE CO.	$2,516	$66,156	0.9620		0.9620	
11	GTE	$7,550	$841,593	0.9910	0.9995	0.9905	
12	LINCOLN TELEPHONE CO.	$346	$16,236	0.9787		0.9787	
13	ROCHESTER TELEPHONE CORP.	$299	$18,595	0.9839		0.9839	
14	SOUTHERN NEW ENGLAND TELEPHONE	$1,488	$156,169	0.9905	0.9945	0.9850	
15	UNITED TELEPHONE SYSTEM	$1,474	$174,519	0.9916	0.9998	0.9913	

Summary Chart of Special Access RAFs

($ TO NEAREST THOUSAND)	COST ADJUSTMENT A	PROSPECTIVE TOTAL ACCESS REVENUE RECURRING TRP SOURCE: (REV2 R.120/C.G) B	R A F C = 1 - (A / B)	
** TOTAL ALL OPERATING COMPANIES	$56,607	$2,277,616	0.9751	TOTL
1 ILLINOIS BELL	$851	108,804	0.9922	LBIL
2 INDIANA BELL	$1,041	30,359	0.9657	NBIN
3 MICHIGAN BELL	$862	62,116	0.9861	MBMI
4 OHIO BELL	$494	58,851	0.9916	OBOH
5 WISCONSIN BELL	$5	28,253	0.9998	WTWI
6 CHESAPEAKE & POTOMAC	$1,470	153,738	0.9904	CPTC
7 DIAMOND STATE TEL.	$6	9,281	0.9993	DSDE
8 BELL OF PENNSYLVANIA	$60	96,866	0.9994	PAPA
9 NEW JERSEY BELL	$535	102,419	0.9948	NJNJ
10 SOUTHERN BELL	$1,192	222,017	0.9946	SBTC
11 SOUTH CENTRAL BELL	$3,068	118,219	0.9741	SCTC
12 NEW ENGLAND TELEPHONE	$7,387	103,346	0.9285	NETC
13 NEW YORK TELEPHONE	$13,288	284,017	0.9532	NYNY
14 PACIFIC BELL	$9,052	194,821	0.9535	PTCA
15 NEVADA BELL	$67	3,942	0.9830	PTNV
16 SOUTHWESTERN BELL TEL. CO.	$7,947	240,671	0.9670	SWTR
17 MOUNTAIN BELL	$2,250	80,103	0.9719	MSTC
18 NORTHWESTERN BELL	$2,344	52,888	0.9557	NWTC
19 PACIFIC NORTHWEST BELL	$251	41,219	0.9939	PNTC
20 CENTRAL OF FLORIDA	$187	4,213	0.9557	CEFL
21 CENTRAL OF NEVADA	$38	6,027	0.9937	CENV
22 CINCINNATI BELL TELEPHONE	$651	17,613	0.9630	CBTC
23 CONTEL OF CALIFORNIA	$105	3,006	0.9651	COCA
24 CONTEL OF NEW YORK	$49	1,708	0.9715	CONY
25 CONTEL OF TEXAS	$28	741	0.9617	COTX
26 CONTEL OF VIRGINIA	$169	3,417	0.9507	COVA
27 GTE CALIFORNIA, INC.	$1,079	35,488	0.9696	GTCA
28 GTE FLORIDA, INC.	$155	25,077	0.9938	GTFL
29 GTE NORTHWEST, INC.	$90	13,456	0.9933	GTNW
30 GTE SOUTH, INC.	$245	22,520	0.9891	GTSO
31 GTE SOUTHWEST, INC.	$171	17,909	0.9904	GTSW
32 GTE NORTH, INC.	$327	35,617	0.9908	GTMW
33 GTE HAWAIIAN, INC.	$0	10,075	1.0000	GTHI
34 LINCOLN TELEPHONE COMPANY	$101	3,588	0.9717	LTNE
35 ROCHESTER TELEPHONE CORPORATION	$206	11,199	0.9816	RTNY
36 SOUTHERN NEW ENGLAND TELEPHONE	$371	36,257	0.9898	SNCT
37 UNITED OF FLORIDA	$270	12,119	0.9777	UTFL
38 UNITED OF INDIANA	$0	3,584	1.0000	UTIN
39 CAROLINA TEL. & TEL.	$40	7,161	0.9944	UTNC
40 UNITED OF OHIO	$72	8,828	0.9919	UTOH
41 UNITED OF PENN.	$31	2,595	0.9879	UTPA
42 UNITED INTER-MOUNTAIN	$51	3,488	0.9854	UTIM
** TOTAL ALL HOLDING COMPANIES	$56,607	$2,277,616	0.9751	
1 AMERITECH	$3,253	$288,383	0.9887	
2 BELL ATLANTIC	$2,072	$362,304	0.9943	
3 BELL SOUTH	$4,259	$340,236	0.9875	
4 NYNEX	$20,675	$387,363	0.9466	
5 PACIFIC TELESIS	$9,119	$198,763	0.9541	
6 SOUTHWESTERN BELL TEL. CO.	$7,947	$240,671	0.9670	
7 U.S. WEST	$4,845	$174,210	0.9722	
8 CENTRAL TELEPHONE CO.	$225	$10,240	0.9781	
9 CINCINNATI BELL TELEPHONE	$651	$17,613	0.9630	
10 CONTINENTAL TELEPHONE CO.	$351	$8,872	0.9605	
11 GTE	$2,068	$160,142	0.9871	
12 LINCOLN TELEPHONE CO.	$101	$3,588	0.9717	
13 ROCHESTER TELEPHONE CORP.	$206	$11,199	0.9816	
14 SOUTHERN NEW ENGLAND TELEPHONE	$371	$36,257	0.9898	
15 UNITED TELEPHONE SYSTEM	$464	$37,775	0.9877	

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 89-554

In the Matter of

An Inquiry Relating to Preparation for
the International Telecommunication Union
World Administrative Radio Conference
for Dealing with Frequency Allocations
in Certain Parts of the Spectrum

SECOND NOTICE OF INQUIRY

Adopted: September 19, 1990; Released: October 1, 1990

By the Commission:

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INTRODUCTION

1. This *Second Notice of Inquiry* (*Second NOI*) summarizes comments and reply comments received in response to the Commission's initial *Notice of Inquiry* (*NOI*) [1] in this proceeding and solicits comments on preliminary Commission proposals, options, and policies for the World Administrative Radio Conference scheduled for February 3-March 5, 1992 (WARC-92) in Spain. All proposals, options, and policies are subject to modification as a result of comments received to the *Second NOI* or as a result of other information that may become available to the Commission. Comments and any additional information will be used to develop further proceedings, if deemed necessary, and will be used to prepare a Commission report that will recommend proposals to the U.S. Department of State at WARC-92.

BACKGROUND

2. In the *NOI*, the Commission noted that the 13th Plenipotentiary Conference (Plenipot), held in Nice, France, May 23-June 29, 1989, determined that a WARC should be held in 1992 to address frequency allocations in certain parts of the spectrum. Specifically, the Plenipot recommended that WARC-92 should consider the Resolutions and Recommendations of three previous International Telecommunication Union (ITU) conferences: namely, the WARC for the Planning of the High Frequency (HF) Bands Allocated to the Broadcasting Service, Second Session, 1987 (HFBC-87); the WARC for the Mobile Services, 1987 (MOB-87); and the WARC on the use of the Geostationary Satellite Orbit and on the Planning of Space Services Utilizing It, Second Session, 1988 (ORB-88). Additionally, the Plenipot recommended that WARC-92 should review Articles 55 (Rev.) and 56 (Rev.) and Appendix 26 of the Radio Regulations and may consider defining certain new space services and allocations to these services in frequency bands above 20 GHz.

3. The *NOI* sought comment on the above topics. It specifically requested comment on the projected frequency needs of the HF (3-30 MHz) broadcasting service, mobile services in the 500-3000 MHz range, high-quality audio or High Definition Television (HDTV) delivered by the Broadcasting-Satellite Service (BSS), and new space services above 20 GHz. Approximately ninety individuals, businesses, and organizations, representing most of the various services that could be affected by WARC-92, expressed their views in this proceeding. These comments are discussed below.

4. Additionally, on June 21, 1990, the ITU Administrative Council, agreed to expand the WARC-92 agenda to include issues, such as an allocation for low-earth orbiting satellites, related to those recommended by the Plenipot. The complete WARC-92 agenda is contained in Appendix B. Proposals on the new issues are set forth herein, and we specifically invite interested parties to comment on them. Unless otherwise indicated, the Federal Government has concurred in these proposals. The proposals are discussed below, beginning with the lower frequency bands.

5. We also note that the Steering Committee of the Industry Advisory Committee (IAC) to WARC-92 submitted a detailed report, based upon information received from its various Informal Working Groups, that offered input to the *Second NOI*. However, due to time constraints, this report was not submitted to the IAC for formal endorsement.

6. We believe that the IAC Steering Committee report offers an important private sector contribution to this proceeding. We commend the Steering Committee and Informal Working Groups for the substantial work effort involved. We are inserting the report into the docket file and invite comment on it.

ALLOCATION ISSUES BELOW 30 MHZ

SPECTRUM ISSUES BELOW 3 MHZ

7. Six commenters to the *NOI* request that Resolution 706 from MOB-87 be added to the WARC-92 agenda.[2] This resolution concerns the protection of phased pulse hyperbolic radionavigation systems (Loran-C) from the fixed service, which operates on a secondary basis in the 90-110 kHz band. It calls for the next competent conference to review the fixed service allocation and consider whether it should be deleted. The commenters stress the need to protect Loran-C from interference because it is a safety service and contend that WARC-92 is the next competent WARC available to address this allocations issue. The Radio Technical Commission for Maritime Services (RTCM) and United Parcel Services, Inc. also request that Resolution 705 from MOB-87, which concerns the development of technical criteria for sharing the 70-130 kHz bands, be added to the WARC-92 agenda because of the interrelationship of the services in these bands.

8. *Discussion*. These resolutions were competent for inclusion in WARC-92 under the guidelines established by the 1989 ITU Plenipotentiary Conference. As a result of comments to the *NOI* and a request by the U.S. Coast Guard, the United States proposed that the last Administrative Council specifically include Resolution 706 on the agenda for WARC-92. This recommendation was not supported by other administrations, and was not included on the agenda prepared by the Council. Similarly, Resolution 705 was not included on the agenda. Thus, we cannot argue that the inclusion of either of these resolutions on the agenda would be consequential to a specific issue on the established agenda. Accordingly, we will not consider these resolutions in the U.S. proposals to WARC-92.

ALLOCATION ISSUES BETWEEN 3 AND 30 MHZ (HF SPECTRUM)

9. Germane to WARC-92 is the allocation of additional spectrum for the HF broadcast service. The *NOI* summarized the results of HFBC-87, set forth the current status of the International Frequency Registration Board's (IFRB's) planning exercise, and identified the additional spectrum that had been allocated by WARC-79. With this as background, the Commission requested comments regarding projected frequency needs of the HF broadcast service, the bases for such projections, whether the projected allocations needed to be exclusive, and whether they should be regional or worldwide. In addition, the Commission sought comment on other issues that would be consequential to the projected allocations and might need to be addressed by WARC-92.

Projected HF Spectrum Needs

10. Of the twenty parties that commented on this portion of the spectrum, fifteen commenters expressly support the need for additional spectrum for HF broadcasting. [3] George Jacobs (Jacobs), a consulting engineer, as well as several other commenters, contend that worldwide HF broadcasting requirements greatly exceed the number of available channels in the spectrum currently allocated. In support of this assertion, Jacobs references the results of the planning exercises conducted by the IFRB for consideration by HFBC-87, wherein the IFRB found that more than half of the broadcasting requirements could not be satisfied at a level that would ensure a quality broadcast service.[4] Jacobs also includes a table extracted from the U.S. Delegation Report from HFBC-87 that shows available channels versus needed number of channels for a particular hour in a particular season. The table shows, depending upon band, that the ratio of needed channels to available channels varies from a high of over 5:1 at 6 MHz to a low of 2:1 at 15 MHz.[5] Similarly, the Association of North American Radio Clubs (ANARC) includes an excerpt from a report by the IFRB to HFBC-87 regarding the planning exercises, where the IFRB found that the average ratio of needed to available channels over a 24 hour period at 6 MHz was 8.48:1.[6] Both Jacobs and ANARC conclude that expansion of the current broadcast bands is therefore necessary.

11. Additionally, Jacobs contends that the expansion should be at least 50% of current allocations, or approximately 1500 kilohertz. He proposes that specific band segments be taken from spectrum currently allocated in these bands to the fixed service and argues that this proposal would amount to less than 15% of the approximately 10,000 kilohertz of spectrum currently allocated to the fixed service.[7] These proposals track very closely with the U.S. proposals at WARC-79. Specifically, Jacobs proposes a new band at 19 MHz and band segments in the 6, 7, 9, 11, 13, 15, and 17 MHz bands that are adjacent to existing HF broadcasting bands. According to Jacobs, these additional segments would provide a total of 1500 kilohertz of new HF broadcast spectrum.[8]

12. The majority of those commenters supporting the need for additional broadcasting spectrum agree with Jacobs's proposal and also point to the fixed bands as a possible source of additional spectrum. Family Stations states that there is an increasing use of the fixed bands by broadcasters under international *Radio Regulation* 342 without significant complaints of harmful interference.[9] It concludes that this activity is indicative of limited use by the fixed service and has led to a *de facto* expansion of broadcasting into the fixed bands. KUSW Worldwide Radio suggests that due to technological advances in satellite, cable, and microwave communications, there is less need for the frequencies assigned to the fixed service and, therefore, additional broadcast spectrum could come from these bands.

13. Several commenters question the need for additional HF broadcast allocations. Mobile Marine Radio, Inc. (MMR) notes that with the recent political changes in the Soviet bloc and the discontinuance of jamming (intentional harmful interference) the perceived demand may be abating. The American Radio Relay League (ARRL) adds that these changes will result in a reduction in congestion in the broadcast bands. ARRL states that it is now possible for previously jammed broadcasters to reach their target areas with fewer frequencies, that there has been a relaxation of media access restrictions in certain countries which has expanded audience opportunities for a wider range of programming via domestic channels, and that there has been an increased delivery of program material to target audiences by newer communications technologies.

14. A few commenters maintain that spectrum efficiency could be enhanced through technical improvements in the operation of broadcast facilities. Thus, the ARRL asserts that if need indeed exists for additional spectrum, increasing the number of channels could be accomplished by making more efficient use of the present allocations through the use of single-sideband (SSB) emissions. Similarly, the World Christian Broadcasting Corporation (WCBC) proposes that a specific timetable be established by WARC-92 for worldwide conversion to SSB emissions. Further, the ARRL notes that some broadcasters use several frequencies simultaneously to increase the probability of reception in their target areas. It states that this practice can be self-defeating because it produces increased co-channel interference and concludes that if broadcasters were to reduce their number of simulcast transmissions, better reception would result. WCBC adds that broadcasters using 500 kilowatt (kW) transmitters should tightly control their antenna beams so that they are "target-specific," with power limited to no more than is necessary to serve the defined target area.

15. Aeronautical Radio, Inc. and the Air Transport Association of America (ARINC/ATA), MMR, and, more generally, the ARRL assert that if additional spectrum is necessary, it should not come from one or more of the bands allocated to either the aeronautical mobile (R), maritime mobile, or amateur services.[10] MMR contends that a strong and continuing demand for terrestrial maritime service exists and that any additional broadcast allocation cannot come from the maritime mobile spectrum. In particular, MMR states that WARC-79 expanded exclusive maritime mobile allocations in several HF bands and that this expansion was based on the needs and experience of countries throughout the world. Therefore, it argues that any change in the maritime mobile allocations to accommodate broadcasting would be highly disruptive and would require another mobile planning conference. More generally, MMR expresses concern that if additional broadcast spectrum is found to be required by WARC-92, this spectrum may be sought in a variety of bands and, thus, any reallocations could affect numerous

services. In order to limit the impact of any reallocations, it asks whether the needs to be addressed can be limited to certain specific bands, such as those at 6 and 7 MHz.

16. ARINC/ATA argues that any expansion of the broadcast bands must not come at the expense of the aeronautical mobile (R) bands. It states that the aeronautical mobile (R) HF allocations are barely adequate to meet aviation's current needs, and that this service will need additional spectrum in the future. It further contends that while satellite operations will eventually supplant HF as the aeronautical service's primary mode of operation for over-ocean flights, terrestrial HF facilities will continue to be needed as a back-up source.

17. *Discussion*. Inadequate allocations for HF broadcasting have been an issue for many years. This issue was last addressed at WARC-79, where the U.S. requested an additional 1840 kilohertz of spectrum to be taken from spectrum allocated to the fixed service.[11] Because of continuing and expanding requirements of the majority of countries for fixed services to meet national needs, only 850 kilohertz was reallocated by the conference to broadcasting. Of that amount, 125 kilohertz was in the 9 MHz band, while the rest was in bands above 10 MHz. As discussed in the *NOI*, the new bands were not to be used until a worldwide HF broadcast planning conference was held.[12] Because there was inadequate spectrum reallocated, with no new allocations in the more popular bands at 6/7 MHz, the U.S. took a formal reservation and reserved its right to take the necessary steps to meet the needs of its HF broadcasting services.[13]

18. At the time of WARC-79, the majority of U.S. HF broadcasting was conducted by the Federal Government, as the Commission had only four licensed (private) HF broadcasters, using a total of approximately 125 frequency-hours.[14] Since that time, there has been tremendous growth in private HF broadcasting, and currently nineteen stations operate approximately 772 frequency-hours daily. This growth has not been easy to accommodate and has not taken place solely in the bands allocated prior to WARC-79. Indeed, a large portion of the growth has been in bands not currently available to broadcasting.[15] The Government began authorizing operations in these bands shortly after WARC-79, in accordance with the U.S. reservations taken at WARC-79. Operation in these bands is on a non-interference basis in accordance with international *Radio Regulation* 342. In view of the foregoing, the Commission agrees that additional broadcasting allocations appear to be warranted.

19. Further, we are not convinced at this time that the recent political changes in the world have eliminated this need for additional HF broadcasting spectrum. At first glance, it would appear that the recent suspension of jamming should reduce the congestion in existing bands and, thereby, the need for additional spectrum, because previously jammed broadcasters should require fewer frequencies. In fact, however, there are likely to be few, if any, benefits that will accrue from the suspension of jamming.[16] First, the suspension of jamming has had little effect on Commission licensed stations, none of which has ever been jammed. Furthermore, it appears that many former jamming stations have been converted to low power broadcast stations, thereby contributing to congestion.[17] More importantly, while the IFRB's planning exercises for HFBC-87 were based upon program requirements and did not take jamming into consideration, they failed to satisfy over 50% of the channel requirements due to insufficient spectrum. Finally, approximately half of the frequency-hours currently authorized for Commission licensees continue to be in bands not currently available to broadcasting because suitable broadcast frequencies are not available due to congestion.[18] Thus, the recent suspension of jamming will have little positive impact on problems of congestion.

20. Determining the amount of additional spectrum required to meet current and future needs of HF broadcasting is difficult. Variables such as propagation, time of day, intended target (service) area (reception zone), transmitter power, type of antenna, and requirements of other broadcasters all play a role in determining whether a specific requirement will be satisfied. Currently, there are 2,930 kilohertz allocated to broadcasting. HFBC-87 attempted to plan this allocation, but failed, due in part to insufficient spectrum.[19] The majority of the comments support the need for increasing the broadcast spectrum by at least 50% (approximately 1500 kilohertz). In addition, IWG 1 has developed a preliminary allocations proposal calling for an increase of 2455 kilohertz.[20] The bands from which this additional spectrum should come are difficult to identify because the same bands in demand for broadcasting are also in demand by other services. Because the commenters and IWG 1 support maintaining the existing allocations for the amateur, aeronautical mobile (R), and maritime mobile services, we propose that any additional spectrum for broadcasting come from the bands allocated to the fixed and (general) mobile services.

21. While the Commission is particularly sensitive to the need for additional spectrum below 9 MHz because of the reservations taken by the U.S. when WARC-79 failed to make any additional allocations in the 6/7 MHz bands, we differ with Jacobs over the 6/7 MHz proposal. These bands are among the most sought after by other services, and so finding additional spectrum for broadcasting will not be easy. Jacobs proposes an addition of 450 kilohertz at 7300-7750 kHz. The amateur community is also interested in the 7 MHz band. WARC-79 maintained the worldwide amateur service allocation at 7000-7100 kHz as well as the amateur service allocation at 7100-7300 kHz in Region 2; however, footnote 528 was added which effectively reduced the amateur status in this band from primary to secondary in relation to the broadcasting service in Regions 1 and 3. ARRL now proposes to correct what it terms the incompatible allocation at 7100-7300 kHz by allocating the band worldwide for the amateur service and shifting the existing Region 1 and 3 broadcasting allocation to 7300-7500 kHz, also on a worldwide basis. Worldwide amateur and broadcasting allocations could provide a mechanism for resolving the problems between these two services. In this regard, ARRL's proposal has merit, except that it fails to add additional allocations to broadcasting in Regions 1 and 3 and it provides for an addition of only 200 kilohertz in Region 2.

22. We believe that this situation can best be addressed by proposing to make the existing amateur and broadcasting allocations worldwide. In our opinion, the best way to accomplish this is for both allocations to shift somewhat. We propose that the amateurs receive 300 kilohertz at 6900-7200 kHz and that the broadcasters receive 200 kilohertz at 7200-7400 kHz. We consider the changes to the amateur allocations to be consequential in nature and thus permissible under the WARC-92 agenda. These proposed allocations fall short of Jacobs's proposal by 250 kilohertz at 7 MHz and do not provide for his request for

100 kilohertz at 6 MHz.[21] We cannot agree completely to his remaining spectrum requirements (350 kilohertz) because of existing congestion at 6 and 7 MHz, and so we propose that the additional spectrum requested by Jacobs in these bands be reduced by half to 175 kilohertz, and we propose to allocate the 5900-5950 kHz and the 7400-7525 kHz bands for broadcasting. With respect to the other bands, we concur with Jacobs's proposal and, therefore, propose to allocate the bands 9350-9500 kHz, 11550-11650 kHz, 13800-13900 kHz, 15600-15700 kHz, 17450-17550 kHz, and 18900-19300 kHz for broadcasting.

Single-Sideband (SSB)

23. Only ARRL and WCBC discussed SSB. We note that at WARC-79 the United States proposed to discontinue all double-sideband (DSB) transmissions in the HF broadcast bands by January 1, 1995 as a way to increase efficient use of the bands, but the proposal was rejected by the conference. At HFBC-87, the United States supported an early conversion date to SSB. Instead, the conference adopted Resolution 517, which calls for conversion no later than December 31, 2015, due to the concerns of many countries regarding the cost and availability of SSB transmitters and receivers.

24. Resolution 517 refers to Appendix 45 of the international *Radio Regulations*, which specifies the characteristics for SSB in the broadcast service. Appendix 45 does not specify fully suppressed carrier SSB, rather, it specifies reduced carrier SSB (RSSB) with a maximum carrier reduction of 12 decibels and a channel spacing of 5 kilohertz.[22] RSSB requires the use of a receiver with a synchronous demodulator, which uses a device for the carrier acquisition that regenerates the carrier by means of a suitable control loop and, thus, locks the receiver onto the incoming carrier (*e.g.*, phase-locked loop). Existing DSB receivers which utilize envelope detection cannot be used with RSSB emissions. Resolution 517 considered the life of a receiver to be approximately ten years and the life of a transmitter to be approximately twenty years. In order to allow use of DSB receivers until 2015, it resolved that all RSSB emissions prior to the 2015 conversion date limit their carrier suppression to 6 dB, which will enable DSB receivers with envelope detection to receive the signal without significant deterioration of reception quality. Although Resolution 517 has not been specifically placed on the WARC-92 agenda, we believe that it can be addressed since it is considered in Recommendation 511, which is on the WARC-92 agenda, in determining the need for additional spectrum.

25. Because a reaccommodation procedure, as discussed in paragraph 32, *infra*, will be required for the new broadcast allocations, and thus limit access to them until a future date is determined by WARC-92, we believe that it is appropriate to require that the proposed additional bands utilize RSSB.[23] In view of the scarcity of HF spectrum, we believe that everything possible should be done to increase the efficient use of this valuable portion of the spectrum. RSSB use would increase the channel capacity over that which would be available using DSB and minimize the amount of additional spectrum needed for HF broadcasting.[24] We propose, however, to exempt the proposed allocation at 7200-7400 kHz from this requirement since it involves shifting the current Region 1 and 3 allocation at 7100-7300 kHz, and is therefore only a new allocation for Region 2. The requirement to use RSSB is identifed in the form of a footnote in each of the affected bands. We seek comment regarding this proposal and the impact it would have on HF broadcasting.

26. We further believe that it would be appropriate to change the conversion date in Resolution 517 to the same date that the new broadcast spectrum allocated by WARC-92 would be available. As discussed in paragraph 32, *infra*, we are proposing that the new spectrum be made available July 1, 2007. Therefore, we propose that the conversion date in Resolution 517 be changed to July 1, 2007.[25] Although this is eight and one-half years earlier than the existing date, we believe that the need for increased spectrum efficiency and the state of current technology warrant such a change. We seek comment regarding this change and the impact it would have on HF broadcasting.

27. In short, due to the congestion in the HF bands, we are proposing a total of 1325 kilohertz of additional spectrum for the broadcast service, rather than the 1500 kilohertz sought by the majority of commenters or the 2455 kilohertz identified by IWG 1.[26] However, since we are proposing that RSSB be used in the new bands, we consider our proposals as essentially greater than or equivalent to what has been requested. Specifically, we are proposing that the broadcast service receive 50 kilohertz with an RSSB requirement at 6 MHz, 125 kilohertz with an RSSB requirement at 7 MHz, 200 kilohertz with no RSSB requirement at 7200-7400 kHz, and 950 kilohertz with an RSSB requirement in the 9, 11, 13, 15, 17, and 19 MHz bands.

Sharing

28. A majority of the commenters address the issue of sharing between broadcast and other services in the 3-30 MHz band. In general, they agree that it is very difficult for other services to share with the broadcasting service in this band because broadcast stations use high power transmitters and highly directional antennas. Commenters therefore generally agree that broadcast allocations should be exclusive and on a worldwide basis.

29. Several commenters, however, contend that, in particular instances, sharing might be feasible and is warranted. ARRL states that although it receives interference from broadcasters in the shared 3900-4000 kHz and 7100-7300 kHz bands, the amateurs make effective use of these bands during certain hours of the day and on narrow frequency gaps between broadcast transmissions. ARRL maintains that loss of access to these bands would cause a severe blow to amateurs' disaster communications capabilities in Region 2. Jacobs states that sharing below 9 MHz could be considered as a means of easing reallocation as long as the fixed and mobile services are secondary to broadcasting. Anna Case (Case) suggests that time sharing may be possible in the lower bands, but admits that it would require constraints on all users.

30. *Discussion*. The commenters contend, and experience shows, that sharing with broadcasting is possible but difficult. Moreover, at WARC-79, the United States proposed to allow existing national fixed operations to continue in most of the bands proposed to be reallocated to broadcasting; both the fixed and broadcast services were to minimize interference to each other, and administrations were urged to establish sharing arrangements. However, these proposals were rejected by the conference, and all new broadcast allocations were established on an exclu-

sive, worldwide basis. Nevertheless, ARRL's comments demonstrate that under some circumstances sharing is possible.[27]

31. Additionally, we believe that it is essential that as a part of any agreed broadcasting reallocation, non-broadcasting HF services must retain the flexibility to maintain regulatory access to bands of spectrum reallocated to the broadcasting service worldwide. Although we are proposing that all broadcast allocations be exclusive and on a worldwide basis, we are proposing a footnote for each new band, except the 7200-7400 kHz band, that provides for access by the fixed and mobile services on a secondary basis. Comments are requested on this proposal as well as the possibility of time, geographic, or other types of sharing. In addition, we request comment regarding what constraints or limitations may be required for such sharing to be feasible.

Reaccommodation

32. To reallocate spectrum on an exclusive basis from the fixed and mobile services to the broadcast service, we will have to displace hundreds of Commission licensed stations that are authorized by the Private Radio and Common Carrier Bureaus. It is imperative that these displaced stations be reaccommodated in frequency bands with performance reliabilities and propagation characteristics essentially equivalent to their existing allocations and that this be done within a reasonable time frame. This would minimize the financial impact that reallocation would have on these services. The reaccommodation procedures adopted by WARC-79 are found in Resolution 8, which also specifies a timetable for conversion, and Resolution 9. Using Resolutions 8 and 9 as models, we have developed a proposal, which is shown in Appendix A as Resolution BBB. We believe that the reaccommodation process will be difficult for all services in all bands, and we are therefore proposing a single conversion date of 15 years (July 1, 2007) rather than two dates as specified in Resolution 8. We are also proposing footnotes for the new bands that will refer to the reaccommodation process in Resolution BBB. We request comments from the affected licensees in those bands that we are proposing to reallocate to the broadcast service with regard to their continued need for the bands and, thus, their need to be reaccommodated. Comments should also address the adequacy of the procedures proposed in Resolution BBB, the adequacy of the proposed timetable for effectuating the reallocation of the bands, as well as the consequences of reduced spectrum for the existing services.

Other HF Spectrum Issues

33. Case suggests that consideration be given to deletion of the portion of the international *Radio Regulations* pertaining to the "tropical zone" because national and international broadcasting requirements will be treated on an equal basis under planning.[28] According to Case, elimination of the tropical zone limits would allow bands to be used for broadcasting on a worldwide basis.

34. MMR notes that while MOB-87 did not implement the 4 MHz and 8 MHz maritime allocations that are shared with the fixed service, it did revise Resolution No. 319, which requests the Administrative Council to include these bands on the agenda of the next competent conference. Therefore, it urges the Commission to seek inclusion of these bands on the WARC-92 agenda and suggests that a change in status to accord maritime mobile either exclusive or sole primary status would enable a future technical conference to integrate these bands into the maritime operating plans. RTCM supports this proposal and adds that Resolution 8, the WARC-79 reaccommodation procedures, should also be placed on the agenda so that it can be updated.

35. National Public Radio (NPR) suggests that international economic, social, and political circumstances appear to support the dedication (set-aside) of a portion of the HF spectrum for the use of public radio entities in order to encourage participation and decrease necessary start-up funds. It urges the Commission to consider the public policy objectives that such an allocation would advance.

36. In addition to its proposal discussed in paragraph 21, *supra*, the ARRL proposes that, if the agenda for WARC-92 permits, the United States pursue the following new amateur allocations: 50-100 kilohertz in the vicinity of 5 MHz, 200 kilohertz near 10.150 MHz, 50 kilohertz near 14.350 MHz, 150 kilohertz near 18.168 MHz, and 150 kilohertz near 24.890 MHz. ARRL also suggests that as propagation changes hour-by-hour, it would be desirable for HF broadcasters to move to real-time, dynamic signal selection methods rather than continue their reliance on propagation predictions and published schedules. According to ARRL, monitoring of reception in the target area for immediate feedback to the broadcaster would reduce interference by deactivating frequencies that cannot be heard in the intended reception area.

37. Brian Cassidy (Cassidy) proposes the creation of an international "Freeband" at 27.410 - 27.970 MHz. Cassidy contends that thousands of U.S. hobbyists currently operate in this band illegally and contribute much to the economy. Cassidy states that the band has been used by hobbyists all over the world for over 15 years and that a U.S. allocation would reduce interference problems and improve the hobby.

38. *Discussion*. No comments were received pertaining to Case's proposal.[29] The U.S. position at WARC-79 was to maintain the existing allocations limited to the tropical zone as well as to increase them by 300 kilohertz. Although we make no specific proposal at this time, we request comments on Case's proposal. With regard to the issues raised by MMR and RTCM, because these considerations are outside the WARC-92 agenda, we are rejecting these proposals. With respect to NPR's proposal, the Commission finds it not to be feasible because of congestion in the HF bands. We also find that such an allocation is unnecessary because there is no current rule that prevents public broadcasters from becoming licensed as international broadcasters. Therefore, nothing is proposed in this regard. Finally, we find that, unlike the Commission's proposed changes at 7 MHz, ARRL's and Cassidy's allocation proposals are not consequential and, therefore, are outside the WARC-92 agenda. Accordingly we will consider them no further. Regarding ARRL's dynamic signal selection proposal, we find that as this addresses a service-oriented rather than an allocations issue, it should be considered in the context of preparations for the HFBC planning WARC scheduled for 1993. Thus, we decline to advance this proposal at this time.

ALLOCATION ISSUES BETWEEN 100 AND 3000 MHZ

39. The *NOI* raised three issues from MOB-87 and ORB-88 that the Commission considered potential topics within the 100 to 3000 MHz band for the WARC-92 agenda. In particular, Resolution 208 (MOB-87), Resolution 520 (Com5/1) (ORB-88), and Recommendation 716 (COM6/F) (ORB-88) were mentioned as candidates for the agenda. Resolution 208, entitled "Extension of the Frequency Bands Allocated to the Mobile-Satellite and Mobile Services and Their Conditions of Use," recommends that a WARC be convened no later than 1992 to consider additional allocations for mobile-satellite and other mobile services in the 1-3 GHz range; Resolution 520, entitled "Future Change in Article 8 for the Broadcasting-Satellite Service (Sound) in the Frequency Range 500 MHz to 3000 MHz," recommends that a future conference consider an allocation for satellite sound broadcasting in the 500-3000 MHz range; and Recommendation 716, entitled "Use of Certain Frequency Bands Below 3000 MHz by the Space Research and Space Operation Services," recommends that a WARC examine coordination procedures associated with the space research and space operations services in the 2025-2110/2200-2290 MHz bands. Recommendation 205 (MOB-87) complements Resolution 208 in that it recommends that a suitable band or bands for international use be designated for future public land mobile telecommunications systems taking into account the relevant CCIR Recommendations and Reports.

40. The Industry Advisory Committee recommended to the Commission that additional items on a selective and limited basis be placed on the agenda. These included: a) the mobile satellite service (space-to-Earth) and (Earth-to-space) on a primary basis in the 137-138 MHz and 148-149.9 MHz bands respectively, b) terrestrial broadcasting (sound) in the frequency range 500 to 3000 MHz as complementary to BSS (Sound), and c) radiodetermination satellite service in the 1610-1626.5 MHz and 2483.5-2500 MHz bands on a primary basis in Regions 1 and 3. The United States proposed to the ITU Administrative Council additional agenda items to incorporate these IAC recommendations. The ITU Administrative Council, after considerable debate, included agenda items which provided the conference the capability to address these issues in some manner. The text of the agenda is attached as Appendix B herein.

TERRESTRIAL MOBILE SERVICES

41. The ITU Administrative Council's established agenda includes the following three items related to an allocation of frequency bands to the mobile and mobile-satellite services and associated feederlinks:

> "a) in the approximate range 1-3 GHz, as indicated in Resolution 208 (MOB-87);
>
> b) for the development in the approximate range 1-3 GHz of a worldwide system of public correspondence with aircraft, as indicated in *Recommendation* No. 408 (MOB-87), or designate for this use a band already allocated to the mobile service in the same range;
>
> c) for the development of the international use of the mobile service for future public land mobile telecommunication systems, as indicated in *Recommendation* No. 205 (MOB-87) or designate for this use a band already allocated to the mobile service; ..."

In the *NOI*, we noted that European countries seem particularly interested in obtaining additional mobile service allocations because of their desire to develop various Pan-European mobile systems, including international digital mobile services. We also noted that MOB-87 adopted a footnote (RR743A) to the international Table of Frequency Allocations to allow twelve countries in Region 1 to use the 1700-2450 MHz band on a primary basis for land mobile services subject to the coordination requirements of Article 14 of the international Radio Regulations. We stated that as the 1700-2450 MHz band is already allocated to the mobile service on a primary basis in Region 2, this allocation issue does not appear to be a concern for the U.S. private sector. In addition, we posed several questions regarding the spectrum requirements (amount of spectrum, frequency bands, etc.) for mobile and mobile-satellite services.

42. A majority of the commenters to this proceeding address the issue of mobile and mobile-satellite service spectrum requirements. These commenters generally fall into two groups: those entities who wish to obtain additional spectrum for mobile services in the 1700-2450 MHz band[30] and those entities who wish to continue the existing services within this band.[31] Both groups, however, take issue with our view that since Region 2 has already allocated the band 1700-2450 MHz to the mobile service, the reallocation of the band is not a concern to the U.S. private sector.

43. Proponents for providing additional mobile spectrum in the 1700-2450 MHz band point to the considerable emphasis in Europe and Japan for allocations within this band to support new mobile services; *e.g.*, personal communication networks (PCN), Digital European Cordless Telephone (DECT), and Future Public Land Mobile Telecommunications Services (FPLMTS). Several commenting parties note that a significant amount of spectrum would be needed if these services were to be implemented in the United States. Moreover, they argue that this spectrum has to be identified, if the United States desires to maintain competitive economic and technological leadership in the provision of these services worldwide. Indeed, some proponents specifically propose an exclusive worldwide land mobile allocation to support new mobile services. They further contend that a specific allocation in the 1700-2450 MHz band is necessary to promote the development of uniform standards and equipment for an international marketplace. The commenters observe that the international mobile allocations in this frequency range are not implemented in the U.S. domestic allocations table to any great degree and that a significant portion of the 1700-2450 MHz band is primarily used by various types of fixed microwave operations.[32]

44. The proponents recognize that, assuming sharing of spectrum is infeasible, if the mobile allocations were to be implemented, new mobile technology would likely require changes in the international Table of Frequency Allocations to reassign some services currently operating in the 1700-2450 MHz band to other bands. These parties suggest that where reassignments are necessary, implementation dates should be set sufficiently far in advance to offset economic hardships to those licensees required to

relocate to other bands. Several of these parties contend that in addition to being provided new allocations, fixed operations could be reallocated as a secondary service in the new mobile bands. Others suggest that fixed operations should be moved to wireline or fiber optic circuits.

45. The proponents differ with regard to the amount of spectrum that should be reallocated. Motorola, Inc. (Motorola) proposes the largest amount of spectrum (800 megahertz) to be allocated for new technology mobile services. Motorola recommends that 200 megahertz of this spectrum be made available immediately, that 300 megahertz be made available in five to seven years, and that an additional 300 megahertz of spectrum be made available in 12 years. Several other proponents, however, propose that only 150 to 200 megahertz be made available, citing studies undertaken within the ITU's CCIR.[33] NYNEX Corporation (NYNEX) specifically disagrees with Motorola's assessment that 200 megahertz is needed immediately for personal portable wireless technologies.

46. Those parties opposing the proposed new mobile service allocations represent diverse user groups. They include the Private Operational Fixed Services (POFS), Instructional Television Fixed Service (ITFS), Multipoint Distribution Service (MDS), Domestic Public Fixed Services, and Broadcast Auxiliary services. POFS licensees provide point-to-point microwave services for a wide variety of users, including public safety, highway maintenance, forestry conservation, fire, emergency medical, local government, utilities, and railroad services. POFS licensees state that 2 GHz point-to-point services are critical to their operations. They contend that there are no suitable alternatives to these operations, that these frequency bands provide the most ideal propagation for long distance communications links to remote areas, that no spectrum alternatives are available, and that replacement of equipment is expensive and would require long procurement cycles. Some opponents assert that the current POFS allocations are barely adequate to meet their current needs and that additional spectrum will be required in the future. POFS licensees therefore maintain that the Commission should not reallocate 2 GHz frequencies to mobile services until we consider whether alternative frequencies are available for POFS licensees, what the cost of relocating POFS users would be, and how much time would be required to permit relocations to occur in a cost-effective manner. In addition, several commenters argue that the mobile services should be required to operate more efficiently within their existing allocations through improvements in operational practices, technical standards, and equipment. They question whether PCN type services and technology should take precedence over the public welfare and safety benefits provided by POFS licensees.

47. ITFS users assert that they need access to the ITFS frequencies in the 2.5-2.7 GHz band and that no suitable frequencies or other adequate transmission alternatives are available. They note that repeated Commission actions since 1963 to reserve frequencies for educational uses constitute a commitment to the educational community.[34] ITFS users contend that a reallocation of the 2.5-2.7 GHz band would be contrary to this commitment.

48. The National Association of Broadcasters (NAB) and Rockwell International Corporation (Rockwell) are cautious on allowing mobile services to use the 2 GHz band services. NAB states that the Commission should take account of the extensive congestion of the 900 MHz and 2 GHz bands used for Broadcast Auxiliary Services, because such congestion is a critical component in any plan to make those frequencies available for mobile services. Rockwell submits that if sharing of the 2 GHz spectrum is to be considered, the Commission should develop as full a record as possible regarding the abilities or inabilities of the fixed and mobile services to coordinate their activities within the same spectrum on a co-equal basis.

49. Finally, McCaw Cellular Communications, Inc. (McCaw) recommends that rather than have U.S. spectrum policies dictated by the differing needs of other countries, the United States should advocate the development of broad allocation categories that would enable the Commission to tailor domestic spectrum allocations to complement the existing telecommunications structure and, thus, best meet the needs of the American consumer. McCaw observes that the majority of commenters fail to address matters relevant to the development of a WARC strategy. The commenters, McCaw notes, have restricted themselves to their own domestic allocation agendas without demonstrating their relevance to the international scene and have failed to identify any means by which the changes may benefit the United States internationally. In particular, McCaw contends that a U.S. domestic allocation plan, especially one that merely paralleled those promulgated in Europe and Japan, could actually present foreign firms with an opportunity to increase their U.S. market share significantly.

50. *Discussion.* The Commission's position in the *NOI* was essentially a statement of the fact that the international Table of Frequency Allocations for Region 2 has a mobile allocation from 1710-2500 MHz on a co-primary basis with the fixed, space research (2290-2300 MHz), radiolocation (2300-2500 MHz), and radiodetermination-satellite (2483.5-2500 MHz) services. Consequently, the United States did not need to make a specific proposal for an international mobile allocation in order to implement any new technology mobile services in the United States. Furthermore, we are not persuaded at this time that an exclusive international allocation for land mobile services would be in the overall best interests of the United States. We concur with the comments of McCaw to the extent that they suggest a policy of flexibility within the allocations. However, we also recognize the benefits that could accrue to U.S. equipment manufacturers if a uniform international allocation were adopted for land mobile services. Nonetheless, on balance we believe that we should continue to have shared co-primary allocations for mobile services with other services in the international Table of Frequency Allocations throughout the 1710-2500 MHz band. This policy would allow any reallocation of the existing spectrum to be accomplished in a domestic Rule Making.[35] The debate within the comments highlights the concerns with respect to the technological, economic, and public policy ramifications of personal portable wireless technologies that will need to be addressed within a domestic rule making for any national reallocation of spectrum from existing users to new technology mobile services. We note that on June 14, 1990, the Commission adopted a *Notice of Inquiry* in GEN Docket No. 90-314 to develop a public record on how best to implement new personal communications services in the United States.[36]

900 MHZ ISSUES

51. GEC Plessey Telecommunications, Ltd. and its affiliate company Stromberg-Carlson Corporation (Plessey) notes the pressing need for spectrum allocations for emerging advanced wireless personal communications, *i.e.* cordless telephones (CT-2). It observes that the United Kingdom (U.K.) is currently providing a public access service operating in the 864-868 MHz band on a shared basis with U.K. Government operations. Plessey notes that this spectrum is not available in the United States and that the Commission is currently considering proposals to introduce CT-2 at 940-941 MHz and later at 941-947 MHz. Plessey recommends that in developing the U.S. position on international allocations, the Commission recognize that CT-2 will likely require at least four megahertz of bandwidth to accommodate business office applications. It states that CT-2 can generally operate within the 800-960 MHz band and that spectrum can be made available in four or five discrete blocks with a separation of no more than eight megahertz spanning a total bandwidth not to exceed 20-25 megahertz. Plessey advocates that the Commission's position ensure that the international frequency allocations adopted at WARC-92 preserve the Commission's ability to facilitate the rapid deployment of this personal communications service in the United States.

52. *Discussion.* We note that the international Table of Frequency Allocations in the 800-960 MHz band has primary shared mobile service allocations in the 860-902/928-942 MHz bands and secondary allocations for mobile services in the 902-928/942-960 MHz bands. It appears from an international perspective that sufficient flexibility in the international allocations is provided to permit the United States to implement this service if we wish to do so within the appropriate domestic proceeding. Indeed, this issue of an allocation for CT-2 is currently under consideration in GEN Docket No. 90-314. Hence, we propose no change in the mobile allocations for the frequency range 806-960 MHz in Region 2.

AIRCRAFT PUBLIC CORRESPONDENCE (APC)

53. Recommendation 408 (MOB-87) requests additional studies on the development of a worldwide system for public correspondence with aircraft and the placement of an item on the agenda of a future WARC at the conclusion of these studies. This Recommendation notes (1) the bands 1593-1594 MHz and 1625.5-1626.5 MHz have been allocated under certain conditions to the aeronautical mobile service to provide the initial allocations for pre-operational and experimental APC systems, and (2) that in some countries, the use of those bands for APC systems would cause considerable difficulty. The *NOI* and commenters did not specifically address this APC issue. The MOB-87 decision to allocate the bands 1593-1594 MHz and 1625-1626.5 MHz to the aeronautical mobile service in accordance with RR 731A, 731B, 731C, and 731D attempts to provide a worldwide allocation for this service. However, some countries assert that this allocation will not sustain an operational worldwide system and that in many areas of the world the service retains a secondary status with respect to other services. Hence, under this agenda item, administrations will seek to upgrade the allocation status of this service worldwide and will seek additional spectrum to meet this perceived demand.

54. Recently, the Commission allocated four megahertz of spectrum at 849-851/894-896 MHz for a terrestrial air-ground public correspondence service to meet United States domestic needs.[37] In that *Report and Order*, we stated that the two megahertz of spectrum at 1593-1594/1625.5-1626.5 MHz is insufficient to satisfy both domestic and international air-ground needs.[38] We noted, however, that if these bands were to become heavily used for international air-ground telephone communications, then U.S. carriers would likely provide aircraft that fly international routes with equipment capable of using both bands. This, of course, would require a domestic Rule Making and equipment type acceptance. However, we also noted that most U.S. aircraft do not fly international routes.[39]

55. Based on the above decisions, we do not believe that additional allocations need to be made on a worldwide basis. Consequently, we are not proposing any additional allocations for an aeronautical mobile service to provide aeronautical public correspondence.

MOBILE - SATELLITE SERVICES (MSS)

56. In the *NOI*, we noted that additional land mobile-satellite (LMSS) allocations were adopted at MOB-87 in the frequency bands 1530-1544 MHz, 1555-1559 MHz, and 1626.5-1645.5 MHz. Portions of the 1530-1544/1626.5-1645.5 MHz bands are shared on either a co-primary or secondary basis with the maritime mobile-satellite service (MMSS). The United States took a reservation to MOB-87 with respect to these allocations, indicating its continuing desire to implement MSS in an appropriate manner to satisfy U.S. requirements.[40] We noted that the Commission subsequently declined to adopt the international allocations for the 1545-1559/1646.5-1660.5 MHz bands and reaffirmed its earlier decision to allocate domestically the bands for the aeronautical mobile-satellite service (AMSS(R)) and other mobile-satellite services.[41]

57. ARRL, Communications Satellite Corporation (Comsat), Geostar Corporation (Geostar), and American Mobile Satellite Corporation (AMSC) suggest that additional allocations be provided near the current MSS allocations. Comsat further argues that the International Maritime Satellite Organization (Inmarsat) would require from 16 to 25 megahertz of bandwidth in both the ship-to-shore and the shore-to-ship MMSS. It states that these requirements are based upon traffic forecasts for communications with ships at sea and the provision of two new services--maritime television and medium to high speed maritime data services. Comsat states that the Inmarsat forecast for the Atlantic Ocean Region (AOR) AMSS(R) requirements is six megahertz by the year 2000, and notes that the International Air Transportation Association (IATA) forecasts nine megahertz for such services over the same time period. For LMSS, Comsat states that the Inmarsat international LMSS projection for the AOR is six megahertz by the year 2005. Comsat says that domestic LMSS and domestic AMSS(R) requirements must also be added to these projections. No other commenter provided forecasts for the amount of spectrum required for the MSS.

58. Geostar and AMSC advocate the need for generic allocations for MSS. AMSC recommends that the Commission continue to pursue generic MSS allocations in international fora. Geostar maintains that we should try to satisfy the domestic MSS requirements by limiting any

additional MSS allocations to systems with national or regional satellite antenna coverage patterns. Geostar asserts that this would provide a basis for the long-term development of national MSS systems throughout the world.

59. ARINC/ATA, on the other hand, states that the MOB-87 compromise should be accepted by the United States and that users should be permitted to use the shared bands in this country.[42] According to ARINC/ATA, the United States should re-examine its generic MSS proposals and "back away from its unilateral attempt to force the rest of the world to accept its proposed and ill-advised non-conforming use of this band especially insofar as aeronautical safety communications are involved." Comsat similarly opposes a generic MSS allocation and proposes to have separate MSS allocations for the land, maritime, and aeronautical services that would be available to satisfy global, national, and regional system requirements. Comsat asserts that while the economic viability of a satellite system may be improved by designing it to support more than a single service, the system need not be operated with all services supported with real-time channel assignments from a single pool of channels common to all services. Comsat states that it is possible to support each service from a separately coordinated frequency pool that is controlled in real-time according to the unique needs and priorities of each service.

60. With regard to the issue of a generic versus specific allocations, Comsat observes that many concerns have been voiced in international fora regarding the potential for interference to safety services and the lack of assurance that sufficient bandwidth would be available when needed. Comsat states that the supposition that safety services can be protected by real-time preemption has not been supported by a demonstration of how this could be achieved easily and reliably and without significant economic penalty to the user community.[43]

61. Comsat and Orbital Communications Corporation (ORBCOMM) further disagree with the Geostar proposal to the extent it would limit any additional MSS allocations to national or regional systems. Although it recognizes that extensive use of satellite spot beams in the new allocations can facilitate improved orbit spectrum utilization efficiency, Comsat argues that because of the current scarcity of spectrum and the coordination compromises required for both the international and national systems, it is only fair to have the new allocations available for both international and national systems. ORBCOMM asserts that this restriction is not appropriate for low earth orbiting satellite because these systems are inherently global in nature.

62. Geostar and Comsat provide specific proposals for additional allocations. Geostar recommends that the Commission propose that spectrum between 1000-3000 MHz currently allocated to the fixed and mobile services be reallocated on a co-equal primary basis with the existing services and the mobile-satellite services. These allocations, Geostar asserts, would allow individual administrations to effect the appropriate balance between satellite and ground based mobile communications depending upon their individual requirements.

63. Comsat provides several proposals for additional mobile-satellite allocations. In particular, Comsat proposes:

a. To allocate the band 1525-1530 MHz on a primary basis to the MMSS in the satellite-to-mobile direction to satisfy some of the expected new demand for shore-to-ship wideband transmissions;

b. To allocate sufficient new spectrum from bands immediately below 1525 MHz for satellite-to-mobile transmission and immediately below 1626.5 MHz for mobile-to-satellite transmissions for all three mobile satellite services;

c. Alternatively, or additionally as requirements dictate, to allocate the band 2500-2535 MHz for satellite-to-mobile and 2655-2690 MHz for mobile-to-satellite to meet the requirements of three mobile- satellite services;

d. To allocate spectrum for LMSS on a shared basis with terrestrial services, for LMSS not supporting safety-of-life, by applying techniques in the LMSS similar to those utilized by Geostar for its data messaging services;

e. To explore the sharing of the Radiodetermination Satellite Service (RDSS) allocations with LMSS having reasonably compatible characteristics;

f. To modify RR 729A, concerning the provision of aeronautical public correspondence with the AMSS(R) service dependent upon the authorization by administrations, to read:

> "Notwithstanding any other provisions of the Radio Regulations relating to restrictions in the use of the bands allocated to the aeronautical mobile satellite (R) service for public correspondence, the bands 1545-1555 MHz and 1646.5-1656.5 MHz may be used for public correspondence with aircraft earth stations. Such communications must cease immediately, if necessary, to permit transmission of messages with priority 1 to 6 in Article 51."

64. Several existing ITFS and multipoint MDS users contend that before any allocations for satellite services are considered for the 2500-2690 MHz portion of the spectrum, the Commission should require the preparation of interference analyses to show that the potential satellite users would not cause harmful interference to the current users in this band.

65. *Discussion*. We believe that the demand for mobile-satellite service is beginning to grow. Until recently, most MSS has been limited to maritime systems, but recent years have seen a significant increase in interest in providing land and aeronautical MSS. This is supported by the implementation of the Qualcomm, Inc. (Qualcomm) and interim Geostar systems, as well as by various other applications before the Commission, for the provision of MSS. In addition, the proliferation of MSS systems being developed by various countries indicates that there will be increasing pressure to accommodate more and more systems within the limited spectrum available for these services. The characteristics used with MSS systems--essentially omnidirectional earth stations with limited discrimination capabilities between satellites--will constrain the number of systems that can operate simultaneously on the same frequencies. Each system will have less spectrum to use as more systems are accommodated in the future.

66. Furthermore, recent studies by the International Civil Aviation Organization's (ICAO's) Aeronautical Mobile Satellite Service Panel forum indicate that, depending on the number of equipped aircraft earth stations being served, approximately 9-13.2 megahertz of spectrum would be required to satisfy the North American AMSS(R) requirement in the year 2010.[44] If this is true, the other mobile-satellite services that are using this band will need to be satisfied in other bands or in other ways as this AMSS(R) requirement develops over the next 20 years. Accordingly, we believe that it is essential to develop MSS proposals to satisfy these additional spectrum requirements.

67. Initially, we believe that each system that is implemented should use the current spectrum as efficiently as possible to satisfy the broadest range of mobile satellite service requirements. Therefore, we will continue to pursue our generic mobile satellite allocations as proposed at MOB-87. Hence, we again propose a generic mobile satellite service allocation for the 1530-1559/1626.5-1660.5 MHz bands. We are modifying these proposals to take into account some decisions made at MOB-87 and recent Commision decisions to provide priority access for maritime safety and distress communications in the maritime MSS for the Global Maritime Distress and Safety System (GMDSS). Since we are making generic MSS proposals, Comsat's proposal for modification of footnote 729A will not be proposed. The generic MSS allocations with priority and real time pre-emption provided for AMSS(R) in accordance with our proposal for RR Add 730 B would not require such a regulation. Instead, we propose to delete RR 729A and several other Radio Regulations adopted at MOB-87 as consequential to our generic MSS allocation proposal.

68. As for additional spectrum allocations, we believe that Comsat's proposal to allocate five megahertz of additional bandwidth in the 1525-1530 MHz band in the space-to-Earth direction to match the current uplink allocation at 1626.5-1630.5 MHz is appropriate. We propose that this spectrum be an extension of our generic MSS proposals and that it be shared with the space operation service on a co-equal primary basis in all three Regions. We propose to reallocate the Region 1 and 3 terrestrial-fixed service currently operating in the band to secondary status worldwide. We propose that these fixed operations continue on a primary basis until 1997, after which time we expect MSS to be implemented in the 1525-1530 MHz band (*See* proposal RR Add 723 B). Also, the 1525-1530 MHz band is currently used in the United States for flight test and telemetry stations in accordance with Part 87. Such flight test and telemetry operations would also continue to operate in the band until such mobile satellite services are implemented.

69. With respect to Comsat's proposal to add MSS to the 2500-2535 MHz (satellite-to-mobile) and 2655-2690 MHz (mobile-to-satellite) bands, we are mindful of the comments provided by the ITFS and Multichannel MDS users that operate in these frequency bands. Given the Commission's continuing commitment to the ITFS and the Multichannel MDS users in this part of the spectrum, we believe the proponents of this proposal should provide the necessary analyses, technical sharing criteria, and appropriate coordination arrangements that would be required to have compatible operations between the satellite and existing services in these bands. Similarly, we will require proponents of the Comsat and Geostar proposals to share MSS on a co-equal, primary basis with similar terrestrial services--*i.e.* fixed and mobile services--to submit interference analyses on a band-specific basis. In addition, we believe that a concept of operations and implementing methodology should be provided to address the dynamic nature of MSS and mobile services currently in the bands to determine the appropriateness of co-equal, primary sharing. These technical analyses and sharing criteria are necessary to assure United States users of the spectrum that compatible operations are possible and to convince administrations at WARC-92 of the appropriateness of such proposals.

70. Even though Geostar notes that the United States has maintained a distinction between MSS and RDSS, we believe there is merit in Comsat's proposal to share the RDSS bands at 1610-1626.5 MHz and 2483.5-2500 MHz on a co-equal, primary basis with mobile-satellite services having systems with compatible characteristics. The original allocation was to permit up to 12 systems using code division multiple access (CDMA) to operate in the RDSS allocations.[45] This service has not materalized as originally anticipated. We believe that additional use should be made of these allocations. In addition, we note that as MSS systems in other bands have also been providing RDSS type information, the two services appear to complement each other. Therefore, we propose an MSS allocation for all three Regions in the same directions as the RDSS allocations in the 1610-1626.5 MHz and 2483.5-2500 MHz in these bands. We believe the MSS should operate with compatible CDMA modulation characteristics similar to the RDSS. When the Commission implemented the licensing provisions for RDSS, we envisioned a service capable of supporting multiple co-coverage systems using pseudo-random CDMA modulation characteristics. The different codes would be coordinated to insure that the several co-coverage systems would be compatible. We have proposed Add 733Z in order to insure that the MSS and RDSS are implemented with compatible CDMA characteristics. We seek comment on the feasibility of implementing this concept internationally within the ITU Radio Regulations. We believe this is necessary for the successful implementation of the MSS in these bands. MSS systems with different digital or analog modulation appear to be incompatible with the RDSS and would create spectrum inefficiencies in this band. If ADD 733Z is not feasible or if it or some similar regulatory provision is not adopted at WARC-92, we believe these MSS proposals should be withdrawn.

71. Furthermore, MOB-87 adopted in Article 28 RDSS Equivalent Isotropic Radiated Power earth station limits for the 1610-1626.5 MHz band in accordance with RR 2548A and RDSS satellite power flux density limits in accordance with RR 2557 in the 2483.5-2500 MHz band as sharing criteria to protect existing terrestrial services. No criteria were adopted to protect the RDSS services from terrestrial services, but Resolution 708 was adopted for the development of sharing criteria for the RDSS and terrestrial services (aeronautical radionavigation, fixed, mobile, radiolocation, and radio astronomy). This Resolution has been placed on the WARC-92 agenda. In addition, MOB-87 adopted in Article 11 RR 1107.2 a provision to apply the Appendix 28 procedure to the radiodetermination satellite service. We also note that U.S. RDSS licensees operating in the 1610-1626.5 MHz band need to comply with the memorandum of understanding (MOU) with the Radio Astronomy community conduct-

ing observations in the 1610.6-1613.8 MHz band.[46] We believe that the RDSS sharing criteria, understandings and regulatory provisions need to be applied equally to MSS in these bands. We recognize, however, that these regulatory sharing criteria in Article 28 and the Radio Astronomy MOU could constrain the types of mobile satellite services that could be implemented in these frequency bands. Consequently, these allocations may not be sufficient to satisfy all of the different service requirements within the MSS. Thus, we seek comment on the applicability of these sharing criteria and understandings to MSS to be provided on a shared basis with RDSS in these bands. We also seek comment on any other sharing critiera or regulatory provisions that will be necessary to support this allocation for MSS as a viable proposal to WARC-92.

72. In 1988, the ICAO Future Navigation Systems (FANS) Committee completed development of the future system concept for air navigation services (which, in ICAO terms, includes communication, navigation, and surveillance (CNS) services). The Global Navigation Satellite System (GNSS) capability is a part of this concept. It is to be supported by available radionavigation satellite systems, which would be available to other civil users, in particular other mobile users. Because of the costly nature of providing enough satellites to satisfy the requirements of a sole means civil aviation satellite navigation system, the United States and the U.S.S.R. are investigating the potential benefits of using the U.S. Global Positioning System (GPS) and the U.S.S.R. Global Navigation System (GLONASS) in a compatible manner. In particular, the United States and U.S.S.R. are investigating the possibility of having a user terminal that can take advantage of both GPS and GLONASS system capability to either increase system integrity and reliability, or satisfy the sole means requirement, which could not be satisfied by either system separately. The GLONASS is designed to operate within the 1597-1617 MHz band in addition to other bands. The GLONASS already has a number of satellites in circular low earth orbit with each satellite operating on a separate center frequency with pseudo-random-noise (PRN) code modulation. The Executive Branch is concerned that the additional MSS allocation in the 1610-1626.5 MHz band could result in interference to GLONASS and thus the potential GNSS. Consequently, the Executive Branch believes that the 1610-1626.5 MHz band should be retained for navigation/position location purposes, as exhibited in the Region 2 aeronautical radionavigation and radiodetermination satellite allocations unless detailed sharing studies demonstrate compatible operations between the GLONASS and the MSS. We seek comments on the feasibility of sharing MSS systems with GLONASS as implemented under the proposals herein.

73. We also recognize that all of the MSS proposals contained herein may not be sufficient to satisfy all of the MSS bandwidth requirements for future systems. Due to the competing demands for spectrum in this frequency range, these proposals are the best that we have been able to identify to date. We seek comments that would provide additional viable allocations for the MSS, recognizing that such proposals should address any necessary sharing criteria and regulatory provisions that would make the proposal feasible (*See, also*, para. 104, *infra.*).

RADIODETERMINATION-SATELLITE SERVICE

74. The WARC-92 Agenda now includes an item to consider ". . . . footnotes relating to the radiodetermination satellite service in the frequency range 1.6-2.5 GHz with a view to harmonizing them and allowing administrations to revise the status of their respective allocations to this service and to review the sharing critera as indicated in Resolution No. 708 (MOB-87)." Geostar proposes that the RDSS allocations be made uniform as a primary service in all three ITU Regions.

75. *Discussion.* We recognize that the WARC-92 agenda did not envision raising RDSS to primary status in all Regions. However, since we are proposing MSS in the RDSS bands on a primary worldwide basis, we concur with Geostar that RDSS should be available on a primary basis in all three Regions. We propose to add the RDSS (Earth-to-space) in the 1610-1626.5 MHz band and RDSS (space-to-Earth) in the 2483.5-2500 MHz band on a primary basis in all three Regions, as a consequential amendment to our proposal to add the mobile-satellite service in these two frequency bands on a primary basis in the three Regions. *See* para. 70, *supra.* Because the characteristics of the two satellite services are to be compatible and will in most instances operate jointly from a single spacecraft, we believe that both services should operate with the same allocation status. This proposal would provide the opportunity to allow administrations to harmonize the footnotes to a primary allocation. We are also proposing as consequential amendments to suppress RR Nos. 733E, 733F, and 753C.

76. As mentioned above, the sharing criteria for MSS, RDSS, and other services in these frequency bands should be the same as those developed for the RDSS. We have identified the criteria adopted at MOB-87 in para. 71 *supra.* Resolution 708 has been included within the Agenda. It invites the CCIR to continue its studies to obtain more precise results concerning the conditions of sharing in the bands 1610-1626.5 MHz, 2483.5-2500 MHz, and 2500-2526.5 MHz between RDSS and other terrestrial services. We seek comment on any additional criteria, for example constraints on the terrestrial services in Article 27 to protect RDSS and the MSS, or modifications to the existing criteria necessary to make the RDSS and MSS viable services in these bands. These sharing criteria are essential to determine the viability and feasibility of these proposals.

LOW-EARTH ORBITING SATELLITES

77. The ITU Administrative Council addressed MSS low earth orbiting satellites by providing a WARC-92 Agenda item to "consider possible allocations of up to 5 MHz of a frequency band below 1 GHz to low-orbit satellites on the basis of appropriate sharing critera."

78. ORBCOMM, Starsys, Inc. (Starsys), and Volunteers in Technical Assistance, Inc. (VITA) are interested in obtaining allocations for low earth orbiting (LEO) satellites. ORBCOMM and Starsys have petitioned the Commission for an amendment of Section 2.106 of the Commission's Rules to establish an LEO MSS and request authority to construct such a system. Each seeks changes at WARC-92 to permit the global operation of an LEO system. ORBCOMM's proposed system would use 370 kilohertz of bandwidth in the 137-138 MHz band for space-to-Earth transmissions and 478 kilohertz of bandwidth in the 148-149.9 MHz band for Earth-to-space

transmissions. In addition, ORBCOMM would use 50 kilohertz of bandwidth in the center of the 400.05-400.150 MHz band to transmit time information on a standard frequency. Therefore, ORBCOMM proposes to add a co-equal primary MSS allocation in the 137-138 MHz band for space-to-Earth transmissions and in the 148-149.9 MHz band for Earth-to-space transmissions. No changes would be required for the standard frequency and time signal satellite allocation at 400 MHz. Starsys also proposes that the 137-138 MHz and 148-149.9 MHz bands be reallocated to LEO MSS in the space-to-Earth and Earth-to-space directions, respectively.[47]

79. VITA is interested in the development and global provision of a low-cost store-and-forward satellite-based packet radio system for computer-to-computer information transfer. It requests that we propose a Fixed Satellite Service (FSS) allocation within the 200-800 MHz frequency range for an LEO service. VITA indicates that a 100 kilohertz downlink and a 100 kilohertz uplink with accompanying guard bands of 10 kilohertz per channel would be sufficient to support four communications channels. ORBCOMM indicates general support for the VITA proposal and believes that its satellite constellation would meet VITA's technical requirements. In late-filed comments, VITA responds that it wishes to pursue it own dedicated system and thus, that its and ORBCOMM's proposals should be considered separately.

80. *Discussion*. We believe we should propose allocations to support low earth orbit satellite systems that represent new technologies. However, the potential need and demand for these new LEO services must be balanced against the desires and needs of the current spectrum users to continue operations. With this in mind, we have examined the 137-138 MHz, 148-149.9 MHz, and other frequency bands to determine suitable allocations for this service. The band 137-138 MHz is currently allocated worldwide on a primary basis to the Space Operation, Meteorological Satellite, and Space Research services (space-to-Earth). There are currently 27 non-geostationary satellites and 16 geostationary satellites identified in the ITU Publication List VIIA of Stations in the Space Radiocommunications Services and in the Radio Astronomy Service, (March 1990). Similarly, in the 148-149.9 MHz band, the ITU publication list identifies 30 non-geostationary satellites and 17 geostationary satellites. ORBCOMM, Starsys, and Vita did not adequately address the difficulties of sharing an LEO MSS system--which essentially has continous global operations with relatively high power--with these other geostationary and non-geostationary satellite systems. We have reservations that the LEO MSS systems could be made compatible with these other satellite systems.

81. In addition to satellite systems, the band 148-149.9 MHz is allocated to the fixed and mobile services on a primary basis. In Region 1, the mobile service allocation excludes the aeronautical mobile (R) allocations. The applications filed by ORBCOMM and Starsys, Inc. do not adequately address the sharing constraints that would be required to share this band on a co-primary basis with these users. In addition, the U.S. Government and other nations use this band extensively for land mobile operations. We believe additional information and study is required to ascertain the possibility of sharing with these existing services. Consequently, we believe that any LEO system allocation should be limited to a secondary status until such sharing studies indicate that these LEO MSS services can be implemented on a primary basis. We have proposed herein a secondary allocation for the LEO MSS in the 137-138 MHz and 148-149.9 MHz bands.

82. However, we do not believe a secondary allocation for LEO MSS operations enable the systems operators to attract the financial and other resources needed for the construction and implementation of an extensive satellite system. Thus, a primary allocation for LEO MSS systems might be more appropriate. As the conference agenda proposes to address this issue in frequency bands below 1000 MHz, we believe a primary allocation of one megahertz below 1000 MHz in each direction would seem appropriate to satisfy the demand for this service. Therefore, we propose that the bands 420-421 MHz and 930-931 MHz be used for LEO satellites in the MSS.[48] The 930-931 MHz band would provide the uplink for the 420-421 MHz downlink. Internationally, the 420-430 MHz band is allocated to the fixed and mobile services with the radiolocation service continuing on a primary basis in the United States and other countries in accordance with RR651. The amateur service also operates on a secondary basis in this band in the United States and other countries. We believe the existing users in the lower one megahertz of the band can be accommodated within the 421-430 MHz band. The 930-931 MHz band has been reserved domestically for an advanced paging service, but we have not taken any action beyond the general allocation. We propose to add MSS on a primary basis limited to low earth orbiting satellites by adding footnote RR 705A. Since there are no sharing criteria for this service with existing services, we propose that this service be implemented subject to seeking agreement with other administrations operating radio services in accordance with the international Table of Frequency Allocations, through the Article 14 procedure.

83. We seek comment on these allocation proposals for the provision of LEO satellite systems. In particular we seek comment on accommodation of existing users in the 420-421 MHz band and the coordination and sharing requirements for these LEO services at 930-931 MHz. We also seek comments on any regulatory procedures in addition to Articles 11 and 13 needed to obtain international recognition and protection of LEO satellite systems.

BROADCASTING-SATELLITE SERVICE (SOUND)

84. The Administrative Council adopted an agenda item to consider the allocation of frequency bands to the broadcasting-satellite service and associated feeder links for the broadcasting-satellite service (sound) in the range 500-3000 MHz, as indicated in Resolution 520 (ORB-88), including the accommodation of complementary terrestrial sound broadcasting uses within this allocation.

85. In the *NOI*, we noted that Resolution 520 (Com 5/1) from ORB-88 called for a future conference to consider an allocation for broadcasting-satellite service (sound) within the frequency range 500-3000 MHz, including feeder links. We also noted that such an allocation could be used to provide wide-area high-quality service to listeners using portable and automobile receivers. We posed several questions regarding the requirements for BSS (Sound), including: whether there is a requirement for BSS (Sound) in the United States; what the projected spectrum needs of this service are in light of the fact that use of the UHF television band is not practical in the United States for BSS (Sound); whether any allocations for BSS (Sound) should be exclusive or on a

shared basis; and what other services or existing systems could be affected by reallocations for BSS (Sound), if specific bands are suggested.

86. NPR, Adventist Broadcasting Service, Inc. (ABS), the Voice of America (VOA), Satellite CD Radio, Inc. (SCD Radio), and AFRISPACE Inc. (AFRISPACE) express support for BSS (Sound) allocations in the 500-3000 MHz band in this proceeding.[49] In addition, the Industry Advisory Committee, prior to the ITU Administrative Council, suggested that the Commission consider the addition of a complementary terrestrial broadcasting service with the satellite allocation for the WARC-92 agenda. The Committee has been actively pursuing spectrum requirement studies and sharing analyses to identify suitable frequency bands for this new service requirement. Further, subsequent to the completion of the *NOI* comment and reply comment period, SCD Radio filed a petition for Rule Making for a domestic allocation in the 1400-1530 MHz band for a new digital quality satellite radio service to be complemented with a terrestrial broadcasting service. Simultaneously, SCD Radio requested authority to construct, launch, and operate a two geostationary satellite system for this service within the United States.[50] Similarly, AFRISPACE filed a petition for Rule Making for such an allocation; *i.e.* BSS (Sound) in the 1470-1530 MHz band and an application to construct the first of two geostationary satellites to provide an international satellite sound broadcasting system (AFRISTAR) on a non-interference basis to Africa and the Middle East.[51]

87. NPR states that BSS (Sound) should be considered for non-commercial public radio usage and that it may present a significant opportunity to achieve total national geographic coverage with signals unattainable by traditional technologies. It recommends that the Commission advocate an exclusive BSS (Sound) allocation or one shared solely with the Inter-satellite Service. NPR contends that its analysis shows that sharing with terrestrial broadcasting ranges from difficult to infeasible. ABS says that it is committed to providing new services to an increasing variety of international audiences and observes that BSS (Sound) presents an opportunity to serve a vast array of worldwide audiences in an efficient and cost effective manner. It proposes the adoption of an exclusive spectrum allocation for this service.

88. In reply comments, VOA maintains that a need exists for BSS (Sound) allocations to support U.S. public diplomacy interests. VOA explains that Europeans, including the Soviet Union, appear to be moving forward with this concept and that the United States will need to cooperate with many nations in order to provide international broadcasting services. VOA's ability to broadcast to other populations directly via satellite will depend upon reciprocity; *i.e.* other administrations' ability to broadcast to audiences in the United States. VOA also notes that BSS (Sound) could become a substantial service internationally and that many different U.S. interests could benefit. It notes the new digital audio broadcasting systems will permit compact disk quality and highly reliable transmission to mobile receivers. VOA questions the Commission's view that use of the UHF television band is not practical in the United States. According to VOA, detailed sharing analyses have begun in the 500-3000 MHz band. Based on its analysis to date, VOA concludes that it appears that geographic exclusivity would be preferred to provide BSS (Sound) frequency assignments. According to VOA's preliminary conclusion, geographic cells with BSS (Sound) would be determined, frequency reuse at sufficient distances from one cell to another would be defined, and other services could be interleaved and use the unused frequency blocks within all cells.

89. SCD Radio notes its recent filings with the Commission for the broadcasting satellite service (sound) with a new complementary terrestrial broadcasting service. Under its proposal, SCD Radio claims nearly every broadcast licensee would be able to operate on a local, 34 channel capacity, CD quality aural broadcast service. At the same time, SCD Radio believes a new 66 channel CD quality satellite radio service would be made possible throughout the United States.[52]

90. AFRISPACE claims that it has identified a clear need for a BSS (Sound) service on an international basis. Consequently, AFRISPACE has proposed a radio satellite service to Africa and the Middle East whereby broadcasters would purchase or lease transponder capacity on its system for the transmission of various broadcast programming. AFRISPACE recommends a separate allocation in the 1470-1530 MHz band for BSS (Sound), because 1) its systems, as proposed, would operate in this band, 2) Resolution 505 (WARC-79) encourages the location of BSS (Sound) in the 1425-1530 MHz band, 3) AFRISPACE's studies of worldwide trends for BSS (Sound) implementation suggests the 1470-1530 MHz band is rapidly becoming a consensus choice, and 4) sharing spectrum with satellite-delivered HDTV would cause unacceptable interference to mobile receivers.

91. Comments from Gary Gaulin propose to add a new commercial band for digital quality sound and digital data broadcasting services for the video display of words to music, the time of day, weather, school cancellations, etc.

92. ARRL comments that sharing presents a difficult problem if the receiver can be physically located anywhere and requires a strong signal. Also, ARRL states that if an administration decided not to implement BSS (Sound), it should be free to make use of the band for some other purpose in accordance with its territorial sovereignty.

93. NAB, Utilities Telecommunications Council (UTC), Harris Corporation--Farinon Division (Harris), APCO, and the Association of Maximum Service Telecasters (MST) oppose an allocation for BSS (Sound) in Region 2. They contend that there is no proven demand for this service. Furthermore, they assert that should this service be implemented in Europe or Asia, it must not create interference to current operations in Region 2. The Association of American Railroads (AAR) maintains that such services, to the extent there is any demand for them, can be accommodated through existing allocations.

94. Several commenters express concern regarding the potential reallocation of spectrum for BSS (Sound). ABS states that the bands under consideration already have frequency coordination problems with some space services. ARRL and Amtech express concern about reallocating the 902-928 MHz band and API expresses concern about reallocating the 952-960 MHz and 932-935/941-944 MHz bands. AAR contends that assigned frequency pairs in the 800/900 MHz bands are needed for the nationwide Advanced Train Control System, that six megahertz in the reserve bands should remain for land mobile uses, and that the POFS bands at 2 GHz should not be made available for BSS (Sound). MST asserts that the 500-806 MHz UHF-TV band and the

1990-2110/2450-2483.5 MHz auxiliary broadcast bands should be protected. NAB contends that the entire UHF-TV band at 470-806 MHz should be protected.

95. Harris, Motorola, ARRL, and APCO suggest that the UHF-TV band be considered for other services. Motorola asserts that improvements in television receivers can eliminate many current UHF constraints, resulting in the availability of 156 megahertz of spectrum. Other commenting parties note that the delivery of television programs through cable and satellite make the need for the current amount of UHF-TV spectrum questionable.

96. Aerospace and Flight Test Radio Coordinating Council (AFTRCC), in late-filed comments, specifically opposes the SCD Radio proposal for BSS (Sound) in the 1435-1530 MHz band because "it is based on fundamental misconceptions regarding the way in which flight test operations are conducted; it posits an unrealistic view of the potential for life-threatening interference to test pilots and others; and it fails to balance, or even address, the relative merits of yet another entertainment and advertising vehicle as against the importance of the telemetry allocation to U.S. national security and global competitiveness." AFTRCC cites several recent Commission decisions whereby we decided not to share the flight test and telemetry frequencies with other services (amateur and auxiliary broadcast) on a secondary basis or with unlicensed devices such as garage door openers.

97. *Discussion*. In view of the recent interest that has developed domestically in providing BSS (Sound) or digital audio broadcasting (DAB) services, as it is referred to in the *Notice*, we recently issued a *Notice of Inquiry* in GEN Docket No. 90-357, seeking comment on several issues that have arisen concerning this service.[53] While many policy issues remain to be addressed in that proceeding, we believe that in the event we ultimately decide that a satellite or terrestrial DAB service would be in the public interest, the United States should be prepared to advance possible international allocation proposals for the service. The question of where to locate this service is not an easy one given the debate among the commenters. Besides where to locate the spectrum, there is also some question as to the amount of spectrum that is required for BSS (Sound) with a complementary terrestrial broadcasting service. Matters are further complicated by the question of whether or not BSS (Sound) can share with other services.

98. To begin with, we note that some studies have indicated that up to 100 megahertz of spectrum would be required for BSS (Sound) including accommodation of terrestrial sound broadcasting within the same allocation. We will, however, attempt to satisfy the domestic requirement for this service as indicated by SCD Radio. The application and petitions appear to require 20 megahertz of spectrum in any given geographic area for the satellite portion of this service. We have examined several frequency bands in trying to satisfy this BSS (Sound) requirement, and we are proposing three options herein for further consideration. These options propose more than the 20 megahertz specifically for the domestic BSS (Sound) requirement in order to provide for the international BSS (Sound) and complementary terrestrial broadcasting services. We address these options in frequency order without indicating a preference. We also address some of the difficulties associated with each option, and we seek comment on the feasibility of each option and what additional regulations, sharing criteria, reaccommodation procedures, etc. may be required to make each option viable. We reiterate that all proposals, options, and policies discussed herein are preliminary and subject to modification as a result of comments or other information that we may receive.

99. The first option focuses on the UHF-TV band. Although the *NOI* indicated that we would not consider reallocating spectrum from the UHF-TV spectrum, upon reflection and analysis of the comments, we believe we should re-examine this possibility for BSS (Sound). Since this service may have a complementary terrestrial broadcasting service and some have indicated a need for a terrestrial broadcasting without the satellite service, we believe the UHF-TV spectrum offers some opportunity to satisfy the requirements for this service.[54]

100. Since SCD Radio has proposed 60 megahertz for this service on a shared basis with other services, we believe, as one option, that we should try to satisfy this requirement as a shared primary allocation in a band with a current satellite allocation. To this end, we note that RR 693 provides for a television broadcasting satellite service in the UHF-TV spectrum (620-790 MHz), which has not materialized in the United States. RR 693 of the Radio Regulations states that the implementation of this allocation requires agreement between the administrations concerned and those having services operating in accordance with the Radio Regulations that may be affected. Such a provision is normally required when a shared allocation is proposed. We seek comment on the possibility of adding a BSS (Sound) allocation at 728-788 MHz, with a similar agreement seeking provision, on a shared primary basis with the other services already allocated in the band (UHF television broadcasting in the United States). We are mindful of the NPR comments that indicate that BSS (Sound) sharing with terrestrial broadcasting would be difficult to infeasible. Should further analysis of the feasibility of sharing confirm NPR's view, we recognize that the implementation of this option by the United States or, with our agreement, by neighboring countries such as Canada or Mexico, would require the suspension of television service in those areas of each country with television channels overlapped by signals in the BSS (Sound) directed to the same service areas, and for some yet-to-be established distance beyond. For example, should we decide to implement 12 megahertz of BSS (Sound) in this country, which would provide 40 BSS (Sound) channels under SCD Radio's approach or 48 channels under the Strothers approach, we may need to vacate two UHF TV channels throughout the United States. Similarly, should we agree to a Canadian or Mexican implementation of BSS (Sound) on other channels in the 728-788 MHz band, then, in order to avoid serious interference to U.S. television service, those additional TV channels would need to be vacated for some distance from the international border. We seek comments on the feasibility of this option, any foreseen impact it would have on the implementation of advanced television service in this country, and any applicable sharing criteria that could be used to establish preclusion zones for television broadcasting, in the event that this option is adopted by WARC-92 and implemented by the United States.

101. The second option focuses on the 1435-1530 MHz band, as proposed by SCD Radio and AFRISPACE and one of the five bands mentioned by the Strothers Petition. This frequency band is heavily used for aeronautical mobile telemetering services by both the U.S. Government

and the private sector. For the private sector, the use of this band is coordinated by AFTRCC as recognized in 47 CFR Section 87.305 and is scheduled on a daily basis in many areas of the country, particularly the East and West coasts. These flight tests take place at altitudes to 60,000 feet and above, and within 200 mile operational areas around specific test areas. Consequently, the interference distance to these operations from other services can be substantial. These flight test, telemetry, and telecommand operations are vital to the U.S. aerospace industry to produce, deliver, and operate safe and efficient aircraft and space vehicles. Because the nature of the BSS (Sound) operations is 24 hour a day programming and the test and telemetry operations are in the proximity of many major metropolitan areas, we believe, as AFTRCC asserts, that the BSS (Sound) transmissions will cause interference to these operations and threaten safety of life and property. Consequently, we do not believe it is feasible to share aeronautical mobile telemetering frequencies with BSS (Sound) or terrestrial broadcasting systems. Therefore, we believe that any allocation to BSS (Sound) and a complementary terrestrial broadcasting service must be on an exclusive basis in the 1435-1530 MHz band. Since we are proposing to reallocate to the MSS the 1525-1530 MHz band on a shared basis with the space operations service (*See* para. 68 *supra),* we believe a reallocation of 32 megahertz (1493-1525 MHz) to BSS (Sound) and terrestrial broadcasting on a shared exclusive basis should satisfy this requirement.[55] This amount of spectrum is less than the 60 megahertz requested, but this would be exclusive spectrum for these two services while the SCD Radio proposal was to share the spectrum with other services.[56]

102. If we were to implement this option, we would need to reaccommodate the flight test and telemetry operations. Therefore, we would propose as a consequential amendment to reallocate the 2390-2420 MHz band to the mobile service for aeronautical telemetering.[57] This would provide spectrum to reaccommodate the flight test operations for most of the spectrum lost to other services. This reallocation is adjacent to the 2310-2390 MHz band allocated to the flight test and telemetry operations and would provide a larger amount of contiguous spectrum for the flight test and telemetry operations. We propose to displace the fixed, radiolocation, amateur, and amateur satellite services currently operating in the band 2400-2420 MHz to above 2420 MHz. In addition, the band 2400-2500 MHz (center frequency of 2450 MHz, plus or minus 50 megahertz) is allocated to Industrial Scientific and Medical Equipment (ISM). We have previously determined that aeronautical flight test and telemetry operations should not share spectrum with unlicensed devices because of the threat to safety of life.[58] ISM devices encompass many different types of equipment ranging from microwave ovens to medical diathermy operating with various power levels under widely differing conditions. This equipment is used by the general public without regard to interference circumstances and may be in operation for many years. Any radio services operating in this ISM band must be able to accept interference from ISM equipment. We therefore propose to reduce the ISM band to 2420-2480 MHz. We seek comments on the feasibility of this proposal, particularly the ability to reclaim the 2400-2420 MHz band from existing ISM equipment. What reaccommodation time periods would be feasible to move the flight test and telemetry operations to the 2390-2420 MHz band? We also seek comments on the possibility of moving the ISM center frequency from 2450 MHz to 2460 MHz or to some other frequency. What time periods would be required for the reaccommodation of ISM equipment to another center frequency and to reduce the ISM band from plus or minus 50 megahertz to plus or minus 30 megahertz? We seek comments on any aspect of this option that would make it feasible.

103. As a third option, we propose to allocate the 2390-2450 MHz band to the broadcasting satellite service (sound) with a complementary terrestrial broadcasting service. We would vacate all other services in this band except ISM equipment, which we would propose to reduce in bandwidth to 2420-2480 MHz. As mentioned above, this ISM band is used extensively in the United States by microwave ovens and other equipment, such as medical diathermy. The Federal Government makes limited use of this band for airport surveillance radars but has no intentions for greater use because of interference from ISM equipment. The band is also allocated to the amateur and amateur satellite services on a secondary basis. This band may offer possibilities to satisfy the broadcasting satellite (sound) allocation, particularly at the low end of the band, recognizing that ten megahertz of spectrum could satisfy 33 multiplexed sound channels. We seek comments on the feasibility of using the 2390-2450 MHz band for BSS (Sound) and reducing the ISM bandwidth. With this option, we also seek comments on the possibility of moving the ISM center frequency. As mentioned in option 2, we seek comments on the time periods associated with reclaiming the 2400-2420 MHz band from ISM equipment or moving the ISM center frequency to 2460 MHz. In this regard, comments are specifically sought on satisfying the broadcasting satellite requirements in the 2390-2420 MHz portion of this band or any other variation of this option which would satisfy the BSS requirement.

104. If the 2390-2450 MHz band is found to be unsuitable for BSS (Sound) or the AFTRCC mobile aeronautical telemetering proposal in option 2, a portion of this band could also offer the possibility of satisfying additional MSS allocations, particularly as an Earth-to-space allocation. If this were considered, we would need to determine an appropriate downlink MSS allocation.

OTHER SPACE SERVICES

105. Recommendation 716 (COM6/F) ORB-88 suggests that a WARC examine the difficulties associated with the tasks of coordination and obtaining agreements required for the development and implementation of stations within the space research and space operation services in the 2025-2110/2200-2290 MHz bands in view of the provisions of Article 14. In the *NOI*, we noted that this recommendation was a potential candidate for the agenda. Subsequently, the ITU Administrative Council included this recommendation as an agenda item. The space research, earth exploration satellite, and space operation service allocations are provided within RRs 747 and 750 for the 2025-2110 MHz and 2200-2290 MHz bands, respectively.

106. Domestically, the band 2025-2110 MHz has been allocated to the fixed and mobile services. It is used by the private sector for the auxiliary broadcast service. Space research and Earth exploration-satellite services are permitted in this band on a case-by-case basis in accordance with footnote US 90 to the international Table of Frequency Allocations. Footnotes US 111, US 219, and US 222 provide specific locations where the space re-

search and Earth exploration-satellite service stations can be operated and under what conditions. In the United States, the 2200-2290 MHz band is allocated to the U.S. Government for fixed (line-of-sight only), mobile (line-of-sight only, including telemetering but excluding the flight testing of manned aircraft), and space research on a co-equal primary basis. Footnote US 303 to the international Table of Frequency Allocations provides for non-Government space stations at 2285-2290 MHz within the space research, space operations and Earth exploration-satellite service. Footnote G101 indicates that the space operations and Earth exploration-satellite services both in the space-to-Earth and space-to-space directions can be accommodated on a co-equal, primary basis with the fixed, mobile, and space research services.

107. The National Aeronautics and Space Administration (NASA) currently operates the Tracking and Data Relay Satellite System (TDRSS) in the 2025-2110 MHz (Earth-to-space and space-to-space) and 2200-2290 MHz (space-to-Earth and space-to-space) bands. This system will support a wide variety of spacecraft, including manned spacecraft, through the year 2000. NASA indicates that coordination in accordance with Article 14 has been a lengthy, expensive, and time-consuming process and that the results are less than satisfactory. Consequently, NASA believes that its safety policy requires that communication links in support of manned space activities be operated in frequency bands with a primary allocation.

108. NASA proposes to upgrade the space research, space operation, and earth exploration-satellite services in the Earth-to-space and space-to space directions for all three services to primary allocations in the 2025-2110 MHz band. A similar allocation for the three services in the 2200-2290 MHz band is proposed for the space-to-Earth and space-to-space directions. These proposals are essentially the same as the U.S. proposals to the 1979 General World Administrative Radio Conference. Consequential changes to Nos. 747, 750, Appendix 28, and Articles 27 and 28 of the Radio Regulations will be required to provide the appropriate sharing criteria with other services operating in these frequency bands. These proposals, however, are intended as WARC-92 proposals only to eliminate the coordination difficulties that currently exist internationally. NASA indicates that the domestic regulations that currently exist should not be changed. We seek comment on these proposals. We specifically request information on the appropriate sharing criteria that would be needed to make the necessary consequential changes to Appendix 28 and Article 27. Our proposal herein to modify Article 28 limits the space-to-Earth and space-to-space operations to the power flux density values prescribed in RR 2557 through 2560.

Extra-Vehicular Activity (EVA)

109. The WARC-92 agenda includes an item for "the consideration of possible allocations of frequency bands above 20 GHz to the new space service applications." A footnote to this agenda item states: "Communications with manned space vehicles may be defined as a new space application which may require the indication of the space service and the frequency bands that this service may use for this purpose."

110. Extra-vehicular activity is described as work activities undertaken by astronauts outside the shelter of their base space vehicle, protected only by a life support space suit. The purpose of this proposal is to provide a primary allocation in an appropriate service for communications during scheduled EVA activities. The system is to provide communications between astronauts and base spacecraft such as the Space Shuttle and Space Station Freedom. The new system will be used for the assembly, maintenance and operation of Space Station Freedom as well as other generic EVA operations, *e.g.*, the repair of the Hubble Space Telescope. All of these communications between astronauts and manned space vehicles are essential to the successful and safe operations of the U.S. Space Shuttle and Space Station Programs.

111. EVA communication support consists of voice and data links between the astronauts working outside their base spacecraft and the base spacecraft. Because of electrical power, mass, and volume constraints for the EVA unit, there are limitations on the achievable transmitted power (about 1/4 watt). An omni-directional antenna on the EVA is necessary to provide orientation-independent communication. Operating range for the EVA link would normally be within about 100 meters of the primary spacecraft, although reliable operation at up to one kilometer is required to support contingency operations. The band selected must be between 270-575 MHz to comply with power and size restrictions of the astronaut's suits.

112. Current limited EVA communication activities operate below 300 MHz. However, with the future expansion of EVA activities, the new system will require additional capacity (a 10 megahertz band is required). Frequency support below 400 MHz is not possible. For these reasons, we are proposing that this new space service application concerning manned space vehicles be satisfied with a primary space research (space-to-space) allocation at 410-420 MHz, restricted to these activities. This proposal is based on demonstrating compatibility of EVA communications activities with existing users of the band. In this regard, we request comments on the appropriate power flux density limit that is needed to protect existing users in the band 410-420 MHz. We also note that a sharing study is under review in the U.S. CCIR Study Group 7 on "Science Services." This study is being conducted by the Study Group 7 Interim Working Party 2/2 that is responsible for preparing input documents to the WARC-92 Joint Interim Working Party. Interested parties are encouraged to participate in the development of this sharing study.

OTHER PROPOSALS

113. Several new proposals that were not included within the Resolutions and Recommendations mentioned in the *NOI* as candidates for the agenda were advanced in the comments.

Public Safety Service

114. APCO proposes that a "Public Safety" mobile allocation be made internationally. It states that public safety users have improved the efficiency of use of their allotted spectrum and yet still have a great need for additional spectrum. APCO contends that public safety use should have priority in the allocation of spectrum and that additional spectrum, possibly taken from the UHF-TV bands, could be made available for this purpose.

115. *Discussion.* No commenters specifically support or oppose this proposal. However, as noted above, several commenters maintain that the UHF-TV spectrum should

not be considered for additional allocations. The proposal for this new radio service category is not within the agenda of the conference, and we do not intend to make a proposal for this service. The mobile service discussion above makes it clear that sufficient international allocations for mobile services exist to accommodate additional spectrum needs for public safety purposes.

Low Power Radiolocation Devices

116. Amtech World Corporation (Amtech), a maunufacturer of automatic vehicle monitoring (AVM) and RF identification (RFID) systems, offers a proposal for introduction in the event the WARC should propose to alter the 902-928 MHz and 2.4-2.5 GHz bands in a manner that could impair the ability of RFID suppliers to utilize these bands. Specifically, Amtech proposes a footnote to the Table of Frequency Allocations to read:

> "The bands 2400-2500 Mhz (sic) and 902-928 MHz in Region 2 may also be used for low power mobile radio location devices on a secondary basis."

117. *Discussion*. Since, as indicated above, we are not proposing any changes to the 902-928 MHz band for mobile services, we do not believe that it is necessary to make a formal proposal on this matter at this time. We will review this decision in light of United States or other administrations' proposals for this frequency band. With respect to 2400-2500 MHz, we seek comment on the ability of the BSS (Sound) to operate in the 2400-2450 MHz band with ISM equipment and low power mobile radiolocation devices. In trying to satisfy the BSS (Sound) requirement, we are proposing to reduce the ISM band to 2420-2480 MHz and to vacate other services from the 2390-2450 MHz band. We are also soliciting comments on moving the ISM center frequency. We will consider the Amtech proposal in conjunction with any decision to provide satellite services or aeronautical mobile telemetering operations in this band and reduce the ISM bandwidth.

Fixed-Satellite Service Proposals

118. Comsat offers proposals to improve the use of the fixed satellite allocations in the frequency bands 3400-3700 MHz and 5850-5925 MHz. Comsat proposes to reallocate the 3400-3600 MHz band from the FSS to the radiolocation service on an exclusive basis and delete RR 784, which calls for the cessation of emissions by the radiolocation systems. It also proposes to delete the radiolocation allocation in the 3600-3700 MHz and 5850-5925 MHz bands in the U.S. Table of Frequency Allocations and to delete U.S. footnote 245, which calls for a case-by-case electromagnetic compatibility analysis for each earth station implementation.

119. *Discussion*. These proposals are not addressed by any resolutions or recommendations from previous WARCs and the subject matter is not on the agenda for this conference. Consequently, it is premature to consider the substance of these proposals.

Radio Astronomy

120. The National Academy of Sciences (NAS), through the National Research Council's Committee on Radio Frequencies (CORF), filed late reply comments addressing several frequency bands used for radio astronomy observations and other scientific purposes. CORF notes that some of the current allocations for scientific uses of the spectrum need protection from interference from mobile and/or satellite communications systems. CORF states that radio astronomers consider the 1660-1660.5 MHz band extremely important for passive research purposes on star formation related to the spectral lines of the red-shifted hydroxyl (OH) molecule. CORF disputes the AMSC comment concerning the U.S. position at Mobile WARC for the 1660-1660.5 MHz band and the Commission's allocation proceeding for MSS. CORF states that the U.S. position at MOB-87 was that these frequencies should continue to be allocated to the AMSS(R) on a primary basis with no allocation to LMSS and that the Commission subsequently made this allocation domestically.

121. CORF also notes the 170O-1710 MHz band is heavily used by the meterological-satellite service to transmit atmospheric data and that the United States should avoid proposals that increase the noise levels in these bands. It further notes the importance of the 1718.8-1722.2 MHz band for passive radio astronomy research and states that the bands 1990-2120 MHz, 2025-2120 MHz, and 2200-2300 MHz are heavily used for space research and should be protected.

122. *Discussion*. We note the concerns expressed by CORF. The United States's proposals to MOB-87 did have an AMSS(R) allocation for the 1660-1660.5 MHz band. However, MOB-87 reallocated this spectrum to the land-mobile satellite service and provided that airborne and ship earth stations could also operate within the LMSS allocation (RR 730A). Domestically, the Commission retained the AMSS(R) allocation on a primary basis in the 1660-1660.5 MHz. The proposal for the generic MSS allocation contained herein is essentially the same as the current international allocation in that both would permit the operation of land, ship, and airborne earth stations. As an added precaution, we are proposing RR 736A to limit aeronautical mobile satellite services in the 1660-1660.5 MHz band to AMSS(R) consistent with real time priority and preemption requirements of RR 730B. These proposals should limit the assignment of aircraft earth stations on these frequencies to emergency situations associated with the safety and regularity of flight when additional spectrum is needed. With respect to the other frequency bands, CORF's concern for the scientific community will be given due consideration in our deliberations for additional allocations. We believe that we have satisfied their concern with respect to the space research allocations in the 2025-2110 MHz and 2200-2290 MHz bands with our proposal for primary allocations.

Wind Profiler

123. The WARC-92 agenda invites proposals to develop new recommendations and resolutions in relation to the agenda for the conference including meterological aids service in frequency bands below 1000 MHz. The wind profiler is a doppler weather radar, operating as a meteorological aid to measure wind direction and speed. Experimental units have been operating near the 406 MHz region and, as such, pose a significant interference problem for the COSPAS-SARSAT system at 406.1 MHz. The United States seeks an allocation on a worldwide basis for this service and therefore recommends that the next competent conference address this issue. Resolution AAA in Appendix A calls for the next competent conference to address allocations for the wind profiler. Rec-

ommendation ZZZ recommends that administrations consider using certain frequencies in making assignments to the wind profiler radars for interim implementation until such time as the CCIR develops applicable recommendations. We request comments on the specific frequencies that should be recommended for the interim implementation of the wind profiler radar.

ALLOCATION ISSUES ABOVE 11 GHZ

124. In the *NOI*, the Commission generally discussed several issues relating to space services in frequency bands above 11 GHz.[59] We were particularly concerned with the possible need for an allocation for High Definition Television (HDTV) to be delivered via the Broadcasting Satellite Service (BSS). We also inquired about whether HDTV by satellite could share spectrum with other services. Further, we sought information concerning new space services' needs for allocations above 20 GHz and whether these services could share spectrum with other services. Finally, we asked what other issues, consequential to allocating spectrum to space services, might need to be addressed at WARC-92.

HDTV BSS

125. Resolution No. 521 (COM 5/3) of WARC ORB-88 called for a future conference to consider allocations for wide RF-band HDTV broadcasting by satellite, including the necessary feederlinks, preferably on a worldwide basis. Although it noted that certain types of HDTV could be provided in the currently planned 11.7-12.7 GHz band, the resolution cited the 12.7-23 GHz frequency range as the appropriate band from which to select a worldwide allocation. The Resolution also called for further studies on the suitability of the 12 GHz band for wide RF-band HDTV, without prejudice to the existing plans. The ITU Administrative Council clarified that the agenda for WARC-92 would include consideration of the studies on HDTV below 12.7 GHz.

126. We specifically sought comment in the *NOI* on the precise requirement for HDTV by satellite, the projected spectrum needs, and the bases for these projections. Additionally, we asked whether the allocations need be exclusive, what other services might be affected by the allocations, and whether it was necessary to have common worldwide allocations. Finally, we sought comment on whether the current allocations at 12 GHz and 23 GHz would be sufficient to meet projected HDTV needs by satellite.

Requirement for HDTV BSS

127. Few commenters directly address the need for HDTV via satellite. Telecommunications Systems (Telecomm) supports an HDTV BSS and notes that CCIR IWP 10-11/3 has concluded that a need for HDTV BSS exists. In Telecomm's view, spectrum should be allocated for this service, since early implementation of incompatible services may preclude accommodating HDTV later. The Advanced Television Systems Committee (ATSC) concurs, stating that reports prepared for the ITU indicate expected development of significant advances in technology in the next 10 to 15 years that could provide the basis for a future generation of HDTV. According to ATSC, it would be prudent to identify allocations that would permit decisions regarding technological developments to be made.

128. MST states that any allocation provided for BSS HDTV above 20 GHz should be flexible enough to allow Fixed Satellite Service operation in those bands as well. It argues that the BSS currently has 500 megahertz of unused spectrum at 12.2-12.7 GHz and that these frequencies may be sufficient to accommodate the HDTV systems of the foreseeable future without additional spectrum.

129. UTC and NAB contend that the need for an HDTV BSS has not been established. UTC states that as the Commission and industry are studying the feasibility of delivering HDTV in existing broadcast spectrum and others are exploring cable and fiber optic delivery to the home, a satellite service does not appear to be necessary. It further observes that domestic satellites already deliver video and argues that advances in satellite receiving equipment have resulted in a *de facto* Direct Broadcast Satellite (DBS) service in the United States. NAB notes that the DBS service has yet to be implemented eight years after the 12.2-12.7 GHz band was allocated for it. Moreover, UTC maintains that a separate allocation to HDTV BSS would adversely affect the DBS service.

130. *Discussion.* To determine the nature and extent of a BSS HDTV requirement is difficult, particularly in the absence of a precise definition of HDTV. Several commenters question the need for any broadcasting via satellite; others state that HDTV can be provided within the existing allocations at 12 GHz; and some envision a new service that will require spectrum separate from that allocated to the DBS at 12 GHz. The Commission will not be in a position to determine the nature of any HDTV BSS requirement until we have more fully examined the proper place of this proposed service *vis - a - vis* the planned DBS service at 12 GHz. We therefore seek further comment on the nature of this proposed service. Specifically, we seek information concerning whether there are any studies available to demonstrate a need for this service; whether it is a replacement for the BSS at 12 GHz and, if not, whether there are economic analyses that demonstrate the viability of two different satellite broadcasting services; and whether providing an allocation for a new HDTV satellite service requires examination of a large amount of spectrum and consideration of its use probably to the exclusion of all other users. Consideration of the latter issue requires a significant showing of need and public interest by the proponents of such a service.

Sharing Between HDTV BSS and Terrestrial Services

131. There is a broad consensus in the comments that the sharing of spectrum between HDTV BSS and the terrestrial services is not feasible. The view is commonly expressed that each of these services should have spectrum separate from the other. Further, terrestrial fixed operators emphasize both the inequity of removing current fixed allocations from their present locations so as to provide for an HDTV BSS and the importance of the terrestrial fixed service allocations between 12.7-23 GHz to their business operations and to the economy of the country. This view is addressed *infra* in the discussion of the several bands that have been identified as possible allocations for HDTV BSS, with particular emphasis on the history of the 12 GHz band, where existing terrestrial fixed users have been placed in a secondary status to allow for the eventual introduction of BSS.

132. *Discussion.* The Commission concurs with the consensus expressed in the comments that the sharing of spectrum between the BSS and terrestrial fixed and mo-

bile services will be difficult. In further examining potential bands for HDTV BSS, we note that these two types of services are incompatible within the same geographic area. Therefore, any allocation that we consider for HDTV BSS must be viewed from the perspective of relocating terrestrial users, and we must consider the various implications of forcing such a relocation.

Spectrum Needs and Alternatives for HDTV BSS

133. Assuming that there may be a requirement for HDTV BSS, we must address which band(s) might be appropriate for providing the service and how much spectrum to set aside in these band(s). Telecomm states that whatever band is selected should be a worldwide allocation and that there should be common standards for baseband and emission formats to reduce inter-Regional and interservice interference and to increase the likelihood of better receivers marketed at lower prices. UTC and Digital Microwave Corporation (DMC), by contrast, do not believe that worldwide allocations are necessary for this service.

134. With regard to the amount of spectrum required to provide a viable HDTV BSS, ATSC observes that CCIR Report 1075 specifies a required bandwidth of between 50 and 120 megahertz per channel for both digital and analog formats. ATSC anticipates that bandwidth compression techniques can reduce the bandwidth to 54 megahertz channels and that this figure could serve as the basis for determining allocations at WARC-92. ATSC proposes at least 10 HDTV channels per orbital location and states that a 500 megahertz bandwidth would easily accommodate 10 HDTV channels when using both senses of polarization. ATSC also notes that CCIR Report 1075 concludes that approximately 500 megahertz should be allocated for HDTV BSS. Similarly, Telecomm estimates that 500 megahertz would be suitable for a worldwide allocation.

Current BSS Bands

12 GHz Band

135. Commenters are divided on the suitability of this band. AT&T, DMC, and Harris believe that the existing allocation at 12 GHz should be sufficient to meet HDTV BSS requirements. AT&T contends that the BSS could develop into an efficient, high-quality service in the 12 GHz band since the band's relative lack of use permits adoption of technical standards hospitable to HDTV with minimal burden to existing services and since signals in the band experience less rain attenuation than signals at 23 GHz. According to AT&T and Harris, placing HDTV in the existing 12 GHz allocation should not be a problem since the DBS is not yet operational. Finally, NAB notes that DBS is capable of providing HDTV to the home through bandwidth compression techniques such as MUSE-E.

136. ATSC opposes using the 12 GHz band for BSS HDTV because current technology, in its view, can provide only narrow-bandwidth HDTV at 12 GHz. Further, ATSC maintains that the BSS plan at 12 GHz would be very difficult to modify to accommodate the necessary wider bandwidths. It notes that the channeling plans are different between Regions 1 and 3 and Region 2.[60] It states that the biggest problem, however, is the limited number of channels that would be available to a large number of countries. ATSC also contends that for most countries, the channels at 12 GHz are not adjacent and therefore cannot be combined into the wide channels that might be needed for HDTV. Telecomm generally concurs with ATSC and adds that as the allocations between Regions at 12 GHz are not identical, there would be inter-Regional sharing problems between the different services.

22.5-23 GHz Band

137. A second potential HDTV BSS band suggested by some commenters is the current BSS allocation at 23 GHz. Because of the current widespread use of the 23 GHz band worldwide for terrestrial fixed systems, the commenters generally agree that this existing BSS allocation would not be a desirable home for any future HDTV BSS and several suggest that the BSS allocation at 23 GHz be deleted from the international Table of Frequency Allocations. In particular, ATSC asserts that the 23 GHz band is heavily used in Regions 1 and 2 for digital microwave service and that those users would suffer serious economic harm if displaced. Similarly, AT&T maintains that the 22.5-23 GHz band forms an integral part of the 21.2-23.6 GHz band that the fixed service currently uses in Region 2 to provide a wide variety of service including short range, digital connectivity, PBX-to-PBX connections between multiple buildings, and connectivity to public communications systems. AT&T asserts that exclusive use of the 23 GHz band by BSS could impair fixed service growth and efficient use of the entire 21.2-23.6 GHz band. ATSC further notes that the band is subject to Article 14 procedures that require the agreement of any country whose services may be affected. Telecomm concurs and adds that propagation conditions in this part of the spectrum are particularly difficult for the BSS. NAS, DMC, and Harris also oppose using the 23 GHz band for HDTV BSS because of the significant embedded terrestrial fixed use. Finally, NAS contends that in the United States, atmospheric water vapor measurements using radiometers that operate at a center frequency of 23.87 GHz are planned, and that the radioastronomy, earth exploration-satellite, and space research services use or are interested in conducting research in portions of this band.

New BSS Bands

17.3-17.7 GHz Band

138. A third potential band, as identified by AAR, NAS, ATSC, DMC, and Telecomm, is the 17.3-17.7 GHz band. ATSC states that this band, which is now allocated for feederlinks to 12 GHz BSS satellites, would meet the desired criteria for HDTV BSS, except for the necessary bandwidth. ATSC maintains that if this allocation were provided for HDTV BSS, then the BSS allocation at 23 GHz could be deleted. Telecomm states that the problems of bi-directional use with feederlinks operating Earth-to-space and BSS operating space-to-Earth in the 17.3-17.7 GHz band can be overcome and would be less serious than problems in any of the other bands considered.

19.7-20.2 GHz Band

139. ATSC offers as a fourth alternative for HDTV BSS the 19.7-20.2 GHz band. It suggests that the FSS currently located in this band could be moved to 23 GHz. Under this scenario, the FSS would share with fixed and mobile services at 23 GHz, and the HDTV BSS would need share

only with fixed and mobile services operating in countries listed in footnote 873 to the international Table of Frequency Allocations. AAR supports ATSC's proposal to use the 19.7-20.2 GHz band for HDTV BSS.

21.4-22 GHz Band

140. The last band identified as a potential home for HDTV BSS is 21.4-22 GHz. ATSC asserts that if this band were to be used for HDTV BSS, current fixed and mobile users of the band could be moved to 20.2-21.2 GHz and share spectrum with FSS and MSS. ATSC notes that the FSS and MSS already share with fixed and mobile users under footnote 873 to the international Table of Frequency Allocations. Nevertheless, ATSC acknowledges that such a reallocation would displace a large number of short haul, digital radio users in the United States and that such a proposal should be considered only as a last resort.

141. *Discussion*. Five specific bands have been mentioned in the comments as potential allocations for a future HDTV BSS. Currently, two of these bands are used extensively by terrestrial microwave systems in the United States and Europe, one is allocated to the fixed-satellite and mobile-satellite services, one is reserved for feederlinks for 12 GHz BSS satellites, and one is allocated to the BSS. Moreover, use of these bands differs among the various regions of the world, and the United States can therefore expect divergent views in international forums on the appropriateness of each band. Accordingly, in light of the difficulties we anticipate in finding suitable spectrum for an HDTV BSS service, the Commission requests further information concerning the need for a common worldwide allocation. In addressing this issue, commenters should distinguish between the common allocations and common technical standards for this service; the latter may be more significant and more easily achieved.

142. In examining the most suitable bands for HDTV BSS within the United States, it is clear from the comments that reallocation of the 21.4-22 GHz and 22.5-23 GHz bands would result in serious displacement of current terrestrial fixed operations. Users in these bands include many who were recently displaced from the 12 GHz band to make room for the DBS service. Thus, we are very reluctant to force another such relocation of terrestrial service licensees absent a very strong public interest showing. To date, such a showing has not been made. We are, therefore, taking the position that the search for spectrum for an HDTV BSS should begin within spectrum whose use will have the smallest impact on existing services, *i.e.* 19.7-20.2 GHz, 17.3-17.7 GHz, and 12.2-12.7 GHz.

143. With regard to the use of the 19.7-20.2 GHz band, one commenter suggests that the FSS in this band be moved to 22.5-23 GHz and that the allocation be shared with existing terrestrial services. However, this band is also allocated to the MSS. While the MSS allocation is only secondary, it was added to the international Table of Frequency Allocations in 1979 and, therefore, fills a requirement that was anticipated at that time. Before further considering this band for possible use by HDTV BSS, the Commission requires additional information on whether BSS and MSS operations can share this spectrum. Commenters should take into account the Advisory Committee's preliminary indication that the MSS allocation in this band should be raised to primary status. Comments are also sought on the practicality of moving the FSS at 19.7-20.2 GHz to the 22.5-23 GHz band, and on the feasibility of the FSS sharing with the existing terrestrial users and planned inter-satellite service users in the 22.5-23 GHz band.

144. The 17.3-17.7 GHz band, which is currently allocated worldwide to the fixed-satellite service with use restricted to providing feederlinks for the 12 GHz BSS, could be used in a bidirectional mode to provide HDTV BSS. This proposal appears the most promising of those discussed thus far from the standpoint of sharing with existing services. There are numerous CCIR Reports that examine the prospect of bidirectional sharing between space services, and these Reports may provide insight as to how sharing might be accomplished.[61] Two potential problems with this proposal exist: the possible need for mobile or transportable feederlinks for the 12 GHz BSS to provide for news gathering and coverage of sporting events and modifications to the worldwide secondary radiolocation allocation that might be required. Comment is requested on how this band can best be utilized for HDTV BSS, with particular emphasis on the potential problems of sharing with BSS feederlinks and radiolocation.

145. Finally, commenters suggested that the existing Region 2 BSS allocation at 12.2-12.7 GHz be used for HDTV BSS. The corresponding bands in Regions 1 and 3 are 11.7-12.5 GHz and 11.7-12.2 GHz, respectively. These bands have already been planned on a worldwide basis for the BSS and provide for 27 megahertz wide channels in Regions 1 and 3 and 24 megahertz wide channels in Region 2. The commenters argue that the channels in this band would not be wide enough to provide for a wide RF-band HDTV service. WARC ORB-88 Resolution No. 521 identifies a possible range of frequencies for a new HDTV BSS and states that the existing 12 GHz band may be considered so long as it is without prejudice to the existing BSS plan. It appears that the existing BSS bands at 12 GHz would be the most ideal home for an HDTV BSS, if the technical problems of accommodating the service within the framework of the existing plan can be overcome. Terrestrial services have already been removed from the band or are in the process of moving. A wealth of technical information already exists concerning the radio propagation characteristics of this band. From the studies being performed, it appears that a new HDTV BSS service could be provided using a digital format. Bandwidth requirements can be greatly affected by any bandwidth compression, channel encoding, and motion detection techniques employed by this service.[62] It is conceivable that digital techniques emphasizing reduced transmission bandwidth will improve greatly over the next two decades. For these reasons, we believe that we should seriously consider the existing 12 GHz BSS allocation as a possible home for a future HDTV BSS. Although the existing allocations are not uniform worldwide, they are in the same general range, and there is no reason to believe that common technical standards could not be developed for this service. The Commission seeks comment on the types of technical advancements necessary to accommodate this service at 12 GHz and the projected time frame necessary for achieving such advancements.

146. In conclusion, the Commission believes that both the 12 GHz and 17.3-17.7 GHz bands offer some promise for a future HDTV BSS and that our efforts should be focused on these two bands. While we tentatively con-

clude that the current 12 GHz band is most appropriate for HDTV BSS at this time, we believe that the 17 GHz band should also be considered for possible future generations of HDTV. The 17 GHz band will also provide an alternative allocation for those countries with assignments in the 12 GHz BSS plans that might have difficulty in implementing those assignments in an HDTV format. Sharing difficulties associated with the other identified bands make them untenable absent removal of the existing services from these bands. The tenuous nature and predicted long-term implementation of the HDTV BSS service does not seem to justify the removal of significant embedded investment from those bands at this time. The Commission therefore proposes that the international Table of Frequency Allocations be modified at 12 GHz and 17 GHz to recognize these bands as potential homes for a new HDTV BSS service. *See* proposals *ADD 838A*, *ADD 868A*, and MOD 17.3-17.7 GHz.

Feederlink Bands For HDTV BSS

147. Only two commenters address the issue of feederlinks for a new HDTV BSS service. ATSC suggests the possibility of using the 27-27.5 GHz band currently allocated for FSS in Regions 2 and 3. It notes that the allocation need only be extended to Region 1 with a footnote added restricting use of the band to BSS feederlinks. ATSC further states that if the 27-27.5 GHz band were not available, either of the general purpose FSS uplink bands at 27.5-31 GHz or 42.5-43.5 GHz could be considered. It submits that an allocation from 27.5 GHz upward would protect NASA's proposed allocation for the Advanced Tracking and Data Relay Satellite System (ATDRSS) at 25.25-27.5 GHz. A final possibility identified by ATSC is the band 47.2-49.2 GHz currently reserved for feederlinks to BSS operating at 40 GHz.

148. AT&T does not offer any specific band for HDTV BSS feederlinks, but rather states that it would be appropriate to place such links in FSS bands. It stresses, however, that such use should not be given any preferential consideration in the allocation process. According to AT&T, fixed uses serve important public needs and HDTV BSS feederlinks should not be allowed to displace existing users.

149. *Discussion*. We concur with AT&T that it is appropriate to place feederlinks in the FSS bands. ATSC has identified several possibilities. Comment is sought on those proposals. Additionally, we request comment on whether the existing feederlink allocations at 18 GHz would be sufficient, if we ultimately decide to use the existing 12 GHz BSS allocation for HDTV BSS.

NEW SERVICES ABOVE 20 GHZ

150. The ITU Nice Plenipotentiary Conference in Resolution Plen/8 resolved that the WARC-92 "may consider defining certain new space services and consider allocations to these services in frequency bands above 20 GHz." Additionally, the ITU Adminstrative Council added that WARC-92 could consider "new space applications above 20 GHz." Several proposals advanced in response to the *NOI* fall within this broad category.

Radiolocation Satellite Service near 25 GHz

151. The Energetics Satellite Corporation (ESC) proposes an allocation for its experimental SAT/TRAC "geolocation system," which currently uses the 19.2-20.2/24.25-25.25 GHz bands. ESC states that its end user transponder operates in the upper band, which is currently allocated to the radionavigation service. ESC requests that the Commission consider providing an allocation for the radiolocation service in this band to accommodate the SAT/TRAC system.

152. *Discussion*. While ESC has requested an allocation for radiolocation at 24.25-25.25 GHz, radiolocation is defined as a terrestrial service in Article 1 of the Radio Regulations. The service ESC describes appears to fall within the definition of the radiodetermination-satellite service (Earth-to-space), which includes both radiolocation and radionavigation by satellite. Because ESC does not propose to provide a radionavigation service, its system would best be accommodated within a radiolocation-satellite service allocation. While that service is currently not defined in the international Radio Regulations, a definition can be proposed that parallels that of the radionavigation-satellite service. *See* RR No. 41. ESC's proposal appears to have merit and we will recommend it. *See* proposal *ADD 47bis*. We note, however, that we are also considering an allocation in this same band for the Space Research Service (Earth-to-space). Therefore, comment is requested on the feasibility of sharing between these two services.

Future Data Relay Satellite and Space Station (Proximity) Wideband Links

153. As previously indicated, Federal Government agencies are conducting their preparations for WARC-92 within the IRAC. Within this forum, NASA has identified several requirements for space services and space service applications above 20 GHz. The first of these is to provide a primary allocation in an appropriate service, with associated sharing criteria, for wideband space-to-space links. The wideband links would be between low-orbiting user spacecraft and geostationary data relay satellites. The forward (data relay satellite-to-user) links are proposed to operate in the inter-satellite service in the 22.55-23.55 GHz band, based on the availability of bandwidth and the feasibility of sharing. NASA proposes that the return (user-to-data relay satellite) links operate in a new primary allocation in the 25.25-27.50 GHz band. In addition, NASA states that wideband space-to-space links are required between permanent space stations and a variety of co-orbiting space vehicles in close proximity to such space stations. NASA proposes that these "proximity" links operate in the 25.25-25.55 GHz band (space station-to-free-flyer) and the 27.1-27.5 GHz band (free-flyer-to-space station) under the same service allocation as used for the data relay satellite links; *i.e.*, the inter-satellite service. We note that these bands have also been selected for international Data Relay Satellite (DRS) and space station activities. The European Space Agency (ESA) and the Japanese are planning several Data Relay Satellites to operate in these bands. In addition, ESA is planning the Columbus module for the Space Station, and Japan is planning the Japanese Experimental Module. All are scheduled for operation in the 1997 time frame. In view of the foregoing, comments are requested on NASA's proposals.

154. NASA has also proposed a minor modification to the definition of the Inter-Satellite Service (ISS) and has proposed that stations operating in the ISS in the 27-27.5 GHz band be exempt from the provisions of RR No. 2613 (*See* proposals MOD 24 and *ADD 881A)*. Commenters should give specific attention to the sharing criteria need-

ed between the inter-satellite service and the terrestrial fixed and mobile services, and between the inter-satellite service and the fixed-satellite (Earth-to-space) service.

Narrowband and Wideband Space Research Links for Manned Exploration of the Moon and Mars, and Other Applications

155. A second NASA proposal under consideration in the IRAC concerns frequency bands for wide bandwidth links between the Earth and the Moon or between the Earth and Mars. In addition, NASA adds that in several years a number of other space research acitvities will require wider bandwidths to operate, such as very large baseline inteferometry (VLBI) by satellite. NASA notes that currently no frequencies are allocated in the ITU Radio Regulations for these purposes. In addition, NASA observes that because of the new definition for deep space adopted at WARC ORB-88, the space research service allocations for deep space cannot be utilized to communicate with the Moon. Smaller bandwidth transmissions can occur in near-Earth portions of the space research allocations near 2 and 14 GHz; however, NASA believes that use of the same band for both sets of links (Earth-Moon and Earth-Mars) is desirable because it permits use of common equipment.

156. For these reasons, NASA proposes that at least one pair of bands be allocated to the Space Research Service on a primary basis due to the "safety of life" aspects associated with communications with a lunar or Martian research base or colony. Frequency bands currently under consideration by NASA include 21.4-22 GHz (space-to Earth), 24.25-25.25 GHz (Earth-to-space), 33.4-34.2 GHz (Earth-to-space), 34.7-35.2 GHz (Earth-to-space), 37.0-37.5 GHz (space-to-Earth), and 39.5-40.5 GHz (Earth-to-space).[63] In support of this proposal, NASA has also proposed a minor modification to the definition of the Space Research Service (*See* proposal MOD 52). Comments are requested on these suggested proposals, particularly with respect to the criteria necessary for sharing with other services in these bands.

Space Research (Deep Space) Near 32/34 GHz

157. The third NASA proposal under consideration in the IRAC is to provide a worldwide allocation to the Space Research Service (deep space) in the vicinity of 32/34 GHz. According to NASA, the nature and status of allocations to the Space Research Service near 32/34 GHz are complex, non-uniform, and not worldwide. For three administrations, the space research allocations are restricted to deep space only. There is a serious potential for interference to national and international deep-space missions because the current allocations allow uplinks and downlinks for space research conducted by earth orbiters to use the same bands as the deep space links. These links are not compatible because of widely different transmission powers and received-signal strengths. The trend toward international cooperative missions for deep space exploration suggests the need for a worldwide primary allocation with direction indicators.

158. NASA is proposing an upgrade of the Space Research Service (deep space) allocation currently contained in Footnotes 890 and 895 to the international Table of Frequency Allocations. The allocations as contained in these footnotes are primary in the bands 31.8-32.3/34.2-34.7 GHz only in the United States, Spain, and Australia. The proposal would upgrade the Space Research Service (Deep Space) allocations to primary worldwide. *See* proposals MOD 31.8-32.3 GHz and MOD 34.2-34.7 GHz. This would support increasing space activities in these bands. Comments are requested on this proposal.

FSS Uplink Power Control Beacon

159. Through its participation in the International Telecommunications Satellite Organization (Intelsat), Comsat states that it has become aware of an uplink power control requirement. Comsat notes that at present the band 27-31 GHz is allocated to the FSS for uplink use only. According to Comsat, achievement of customary FSS uplink availability and performance standards in this band, despite the significant propagation impairments present, will require the use of sophisticated uplink power control systems. Because such systems require continuous direct and accurate measurement at the uplink earth stations of path attenuation in the uplink band, Comsat states that the uplink earth station needs to monitor a narrow-band beacon transmission from the satellite. To accommodate this, Comsat states that Intelsat is requesting a footnote to the international Table of Frequency Allocations that will permit the 27-30 GHz band to be used by the FSS for downlink beacon operations in support of uplink power control in that band. While Comsat does not propose a specific band for this purpose, it urges the Commission to accept the principle of downlink allocations in the subject uplink bands and, in particular, requests that the United States take the initiative in proposing that this matter be placed on the WARC-92 agenda.

160. *Discussion*. Comsat's and Intelsat's suggestion appears to be reasonable and might also be applicable to other FSS frequency pairs in bands above 20 GHz. The use of power control beacons above 20 GHz appears to be a new service that we believe falls within the limits of the agenda as contemplated by the Plenipotentiary Conference. As noted earlier in the discussion on HDTV BSS feederlinks, NASA has proposed using the 25.25-27.5 GHz band in its ATDRSS program. Discussions between NASA and Comsat representatives indicate that there would be no problem with restricting the uplink power control operations to frequencies above 27.5 GHz. Therefore, we support the proposal and will propose that a footnote be added to the allocations table in the 27.5-29.5 GHz band for this purpose. *See* proposal *Add 882A*.

ADDITIONAL ALLOCATIONS

161. In the bands above 11 GHz, several commenting parties suggest changes to the allocations table that were not specifically solicited by the *NOI*. These include provision of additional spectrum for FSS uplinks and modification to Footnote 859 to provide a generic MSS with an addition of a companion downlink.

New FSS Uplinks

162. Comsat states that there is currently an imbalance between uplink and downlink spectrum available in the Ku band. Specifically, there exists a 500 megahertz uplink shortfall in Region 2 and a 250 megahertz shortfall in Regions 1 and 3. It states that this shortfall has resulted in inefficient use of the Ku band. Comsat proposes that the 14.5-15 GHz band be allocated for the general use of the FSS on a shared basis with fixed and mobile services. It

notes that while the band 14.5-14.8 GHz is currently allocated internationally to the FSS, its use is currently limited to feederlinks for the BSS. Comsat indicates that this band is currently allocated for Government use in the United States, but states that NTIA has recently invited examination of greater sharing between Government and non-Government allocations and that it might be a good time to examine this specific case. Comsat notes that there are nineteen countries in Africa and Asia with BSS feederlinks assigned in this band, although some of these also have assignments in the 17.3-18.1 GHz band. Nevertheless, Comsat states that sharing BSS feederlinks with FSS should not be difficult, especially since the orbit locations and frequencies are established in the BSS plan as a matter of record. It adds that allocation of this spectrum to the FSS might alleviate much of the worldwide pressure to use the 3400-3600 MHz band for FSS.

163. CBS, Inc. (CBS) and the IDB Communications Group, Inc. (IDB) support Comsat's general proposal to add additional FSS feederlinks in the Ku band spectrum. CBS and IDB point to a heightened need for such spectrum to support the increasing use of satellite news gathering (SNG). CBS notes that SNG has become an important tool in international news gathering and this technology must be available if U.S. news organizations are to maintain their ability to cover world events. AT&T notes, however, that terrestrial services in Region 1 make significant use of the 14.5-15 GHz band and that these requirements may militate against Comsat's proposed solution. Nonetheless, AT&T believes that the issue of the imbalance of FSS downlinks and feederlinks deserves a place on the WARC-92 agenda.

164. *Discussion*. The issue of additional FSS spectrum to correct the apparent imbalance between uplink and downlink frequencies was addressed at the recently concluded ITU Administrative Council meeting. An item was added to the agenda to consider the band 14.5-14.8 GHz for reallocation to the Fixed-Satellite Service. The United States delegation to that meeting opposed the addition of this item to the agenda with the current band limits because the significant current usage in the band, particularly in Europe and the United States, precludes its use in those areas by the FSS. As such, its use for international Fixed-Satellite Service by Intelsat or any other international consortia is problematic. The Commission, therefore, opposes this suggestion and proposes that the United States formally oppose such a reallocation at WARC-92. To pursue such an allocation change at this point would be counterproductive in that it would divert efforts away from the pursuit of more promising solutions that could meet this legitimate need of the Fixed-Satellite Service.

Mobile-Satellite Service at 11/14 GHz

165. Qualcomm provides a description of its OmniTRACS system and suggests several changes to the international Table of Frequency Allocations that would facilitate expanding its system's use worldwide. According to Qualcomm, the OmniTRACS system currently provides a nationwide, two-way data and position reporting service utilizing existing Ku band satellite transponders and operating pursuant to footnote 859. This footnote was adopted at WARC-79 and provides for land mobile-satellite service (Earth-to-space) in the 14.0-14.5 GHz band on a secondary basis. Qualcomm notes that over 7170 terminals are currently in use in its system without a single reported case of interference over the last year of operation. It says that it intends to operate a joint venture system in Europe, North Africa, and the Middle East.

166. *Discussion*. The U. S. delegation to the ITU Administrative Council proposed that the 1992 WARC agenda include an item that would accommodate this proposal. However, they did not prevail. As such, this proposal falls outside the scope of the agenda, and the Commission shall not pursue it at this time.

Mobile-Satellite Service near 20/30 GHz

167. The WARC-92 Federal Advisory Committee advised the Commission just prior to the ITU Administrative Council meeting of issues it believed should be included on the WARC-92 agenda. Among those issues was a proposal to include within the agenda an item to consider upgrading the secondary mobile-satellite service allocation at 20/30 GHz to primary. The Commission staff considered this proposal and concluded that such an allocation change could be considered as falling within the currently proposed agenda under the category of new space services above 20 GHz.

168. *Discussion*. The Commission recognizes that there is an increasing tendency to develop and implement space platforms that integrate a wide variety of services.![64] This is particularly so with regard to the mobile-satellite services, but can also include the provision of fixed- satellite services as well. For these systems to be viable, the system developers must be assured that the services they provide will be protected from harmful interference. This requires a primary allocation. In view of the foregoing, the Commission has preliminarily decided to propose a primary allocation for the mobile-satellite service at 20/30 GHz. Comment is requested.

Earth Exploration-Satellite near 18 GHz

169. NAS states that scientists currently use the 18.6-18.8 GHz band for passive sensor measurements of environmental phenomena related to the earth's surface. It contends that this band is critical for these measurements and should not be considered for HDTV BSS. NAS recommends that because the earth exploration-satellite (EES) service is primary in Region 2 but only secondary in Regions 1 and 3 that the United States propose that the Region 1 and 3 allocations be upgraded to primary status.

170. *Discussion*. The U.S. delegation to the ITU Administrative Council proposed that the WARC-92 agenda include an item that would accommodate this proposal. However, they did not prevail. As such, this proposal falls outside the scope of the agenda, and the Commission shall not pursue it at this time.

Earth Exploration-Satellite near 61 GHz and 157 GHz

171. NOAA, through the IRAC forum, has provided information concerning a need for allocations for passive EES operations in the 60 and 160 GHz regions of the spectrum. They have advised us that space sensors have been using the passive bands more substantially in recent years in order to obtain higher quality data as well as data in those areas of the atmosphere that are not available through the use of other bands. Noise temperature resolutions in the area of 0.3 degrees Kelvin are required to make proper use of this data. To avoid the potential of future interference to passive bands now in use or planned for use in the near term, NOAA proposes new

allocations of passive bands. Bands below 61 GHz are affected by Earth's magnetic field when being used to measure mesospheric temperatures at heights between 45 and 75 kilometers. The band at 157 GHz is needed to avoid interference from local oscillators, in the same sensor, measuring temperatures in the 50 GHz and 60 GHz bands.

172. Therefore, NOAA proposes that allocations in the 59-64 GHz band be split to allow a primary allocation for a passive band at 60.7-60.8 GHz. It also proposes that the band 151-164 GHz be split to allow a primary allocation for a passive band at 156-158 GHz. These bands were selected because other bands near the proposed bands do not provide data that is contamination free. The proposal is to provide worldwide primary allocations in order to support passive sensors currently in use and under development. NOAA further notes that studies of the technical sharing criteria for use in these bands are currently under development.

173. *Discussion.* NOAA's request and proposal appear to address a legitimate scientific requirement and should pose no hardship on the services currently allocated in these bands. We have tentatively decided to recommend that such a proposal be forwarded to WARC-92, contingent in part on the results of the above mentioned studies. Comment is requested.

General - Satellite Service

174. In late filed comments, Leslie Taylor Associates (Taylor) suggests that the Commission consider proposing a reallocation of frequency bands above 20 GHz from the Fixed-Satellite Service to a General-Satellite Service, which would permit fixed-, broadcasting-, and mobile-satellite operations in the same frequency band. Taylor describes NASA's plans to pursue its Advanced Technology Satellite (ACTS) program at 20/30 GHz, which envisions providing a broad variety of services, including use for personal access communications. Taylor notes that in order to encourage private investment in a commercial Ka-band satellite system, such a system should be able to offer the range of services likely to be demonstrated by the ACTS program.

175. *Discussion.* The proposal made by Taylor may have merit in opening the way to provide a virtually unlimited variety of services through a single satellite system. We believe that a proposal for General-Satellite Service above 20 GHz, if accepted, would fulfill the requirements identified for upgrading mobile satellite service to primary status at 20 GHz and 30 GHz. Therefore, we believe this proposal to be significant and urge additional comment and discussion on it.

OTHER MATTERS

ARTICLES 55 AND 56

176. The *NOI* discussed Resolution PLEN/8,[65] wherein the Nice Plenipot instructed the ITU Administrative Council to include on the WARC-92 agenda, consideration of Articles 55 (Rev.) and 56 (Rev.) of the Radio Regulations, as amended by MOB-87, regarding requirements for on-board maintenance of shipborne radio and electronic equipment. Articles 55 (Rev.) and 56 (Rev.) mandate the carriage of personnel certified to maintain such equipment.

177. This action was taken recognizing the desirability of finding an appropriate solution to the problem of the reservations taken by many maritime administrations (including the United States) to these two Articles. It is further noted that the United States supported the decision taken by the International Maritime Organization (IMO) on the maintenance requirements.[66] The IMO's Safety of Life at Sea (SOLAS) Regulation IV/15 allows at-sea maintenance as one of three equal options available to administrations to ensure the availability of the functional requirements of the Global Maritime Distress and Safety System (GMDSS). At-sea maintenance is mandatory only insofar as it may be one of a minimum of two methods (of three) of maintenance that may be selected by an administration for certain vessels covered by SOLAS in the open sea beyond medium frequency radio coverage and in polar regions, as defined by SOLAS Chapter IV.

178. Incorporation of Articles 55 (Rev.) and 56 (Rev.) on the agenda of WARC-92 was largely an initiative of the [then] Secretary General of the ITU. Facing for the first time in ITU history such a great rejection of technical decisions of an Administrative Conference as occurred in 1987, plus the same rejection by even more countries at the 1989 Plenipot, the Secretary General reported to the Plenipot his concern and suggested the desirability of finding an appropriate solution to the problem. [67] The Plenipot concluded that reconsideration of these two articles, as amended by WARC MOB-87, would be appropriate for WARC-92.

179. The Radio-Electronics Officers Union and the American Radio Association (ROU/ARA) encourage the United States to adhere to the text of Articles 55 (Rev.) and 56 (Rev.). ROU/ARA maintain that in taking a reservation to these articles, the United States disregarded the importance of international uniformity and failed to consider the inadequacies of the IMO flexible approach. ROU/ARA state that the reservation conflicts with an ITU purpose of promoting the adoption of measures for ensuring the safety of life through international cooperation, and that the reservation effectuates a dual maritime safety and distress system. ROU/ARA suggest that carriage of properly certified on-board maintainers is necessary to maximize the availability of GMDSS equipment.

180. Comsat and the American Institute of Merchant Shipping (AIMS) oppose ROU/ARA's position and support the reservation taken by the U.S. Delegation in 1987. Comsat contends that the U.S. reservation is in accordance with the view of the IMO. Comsat states that the IMO decision reflects the sentiment of the vast majority of the international maritime community.[68] AIMS, a national trade association representing 21 U.S.-flag carriers owning or operating tankers, dry bulk vessels and other ocean-going vessels engaged in domestic and international trade, asserts that the United States should maintain its reservation to the two articles until they are revised to coincide with the IMO GMDSS decision. AIMS notes that the IMO adopted a flexible set of options for radio maintenance and repair to ensure the availability of distress and safety communications equipment to meet the GMDSS functions. AIMS states that the ITU amendments fail to recognize the importance of providing functional availability through alternative methods. In effect, according to AIMS, the ITU treaty would compel nations to carry on-board maintainers in every case even though this is only one of three options available through the SOLAS

treaty. AIMS believes that the ITU Radio Regulations would force the on-board maintainer to be the sole operator of GMDSS equipment.

181. AIMS states that the issue of a dual distress and safety system enabled by a U.S. reservation should not be of great concern since the world will have a dual communications system in the 1992-1999 transition period from the present manual Morse radiotelegraphy ship-to-ship distress alerting system to the ship-to-shore GMDSS. AIMS states that nations failing to embrace SOLAS by not taking an ITU reservation merely limit their options to ensure functional availability of the GMDSS equipment and notes that uniformity in the GMDSS remains unchanged irrespective of ITU reservations.

182. *Discussion*. The United States took its reservation in 1987 in concert with many maritime nations after much due consideration and evaluation. A lengthy U.S. position paper for the WARC MOB-87 was developed in the years prior to the 1987 conference and included discussion of a U.S. reservation, should one be necessary. The reserving countries in Geneva in 1987 believed that the mandated carriage of personnel certificated for the maintenance of shipborne equipment would be an unnecessary and unacceptable burden and would be inconsistent with actions being taken within the IMO. In November 1988, the IMO conference unanimously adopted SOLAS treaty amendments consistent with previous decisions of the Maritime Safety Committee and its relevant Sub-Committees, as well as with the position reflected in the reservations of the prior year. At present, nations representing a large majority of the world's shipping tonnage have taken explicit reservation to Articles 55 (Rev.) and 56 (Rev.).

183. The Commission believes that the question of international uniformity between the IMO and the ITU treaties is answered within the consistency of the U.S. position over the last decade. The reservation to Articles 55 (Rev.) and 56 (Rev.) allows the U.S. to be consistent since the United States accepts both instruments (SOLAS and the Radio Regulations). It has been the U.S. position that although the SOLAS treaty identifies three maintenance options and equates them, the duplication-of-equipment option provides a greater margin of safety because it provides essentially no outage time. There is an inherent equipment outage time associated with the option of on-board maintenance because there is a finite time necessary for repair of failed equipment. This time could include the inability of an on-board maintainer to fix certain equipment, either as a result of lack of appropriate knowledge or lack of necessary parts. In such case, the vessel is without use of mandated equipment until the next port-of-call. The most effective means of maximizing equipment availability is by duplication-of-equipment, as occurs with avionics installed in aircraft.

184. The purpose of the IMO flexible approach is to provide the greatest margin of maritime safety consistent with operational and economic realities. The ROU/ARA conclusion that shore-side repairs are of limited value must be rejected because shore-side is the repository of the resources of spare parts, supplies, and corporate knowledge of both manufacturers and service repair facilities that are needed to support the shipping industry.

185. As regards a dual distress and safety system, we believe that the "system," as defined by SOLAS, is dual only insofar as the 1992-1999 transition period between the present system and the GMDSS is concerned. The U.S. position at the IMO SOLAS conference in 1988 was that as short a transition period as possible would be in the best interests of maritime safety, and the United States sought a much shorter period. The IMO conference, weighing the advantages of increased safety inherent in a short transition, decided instead in favor of economically amortizing existing equipment over a longer period. The United States accepts the longer, seven year transition with the inclusion of a "bridge" of medium frequency radiocommunications equipment applicable to both systems so that there is no loss of communications between ships in either system.

186. The Commission believes that it would be in the interests of the United States to revise at WARC-92 Articles 55 and 56 so that they conform with the IMO decisions, as embodied in the SOLAS treaty and incorporated in subsequent guidance and interpretation provided by that international body. Additional guidance consistent with SOLAS is now being developed by the IMO Radiocommunications Sub-Committee for further consideration. This guidance is not expected to be completed by the IMO before the U.S. proposals for WARC-92 are due. The guidance, however, should be completed before the U.S. positions for WARC-92 are needed so they can be appropriately considered as U.S. negotiation strategy is developed. Consequently, proposals for revision of Articles 55 and 56 have been drafted and are incorporated within this *Second NOI*. Comments are requested on the appropriateness of these draft proposals.

ADMINISTRATIVE

187. Authority for this *Second Notice of Inquiry* is contained in Sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303 (r), and 403. Pursuant to Section 1.1204(a)(4) of the Commission's Rules, 47 CFR Section 1.1204(a)(4), no *ex parte* restrictions apply to this proceeding.

188. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR Section 1.415 and 1.419, interested parties may file comments on or before **December 3, 1990** and reply comments on or before **January 7, 1991.** All relevant and timely comments will be considered by the Commission before taking further action in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW, Washington, DC 20554.

189. For further information concerning this *Second Notice of Inquiry*, contact Mr. William Torak, Office of Engineering and Technology, (202) 632-7025.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] *Notice of Inquiry*, GEN Docket No. 89-554, 4 FCC Rcd 8546 (1989).

[2] These six commenters are: ARNAV Systems, Inc., Dennis Atkeson, Avionics Engineering Center, Ohio University, Radio Technical Commission for Maritime Services, United Parcel Service, Inc., and Wild Goose Association.

[3] The comments and/or reply comments supporting additional allocations for HF broadcasting are: Adventist Broadcasting Service, Association of North American Radio Clubs, Anna Case, Christian Science Monitor Syndicate, Family Stations, High Adventure Ministries, International Monitoring Association for Students & Teachers, George Jacobs & Associates, Consulting Broadcast Engineers, Benjamin Krepp, David Kurlander, KUSW Worldwide Radio, National Association of Shortwave Broadcasters, Daniel Ross, World Christian Broadcasting Corporation, and Philip Yant.

[4] A recent National Telecommunications and Information Administration (NTIA) technical report, "Spectrum Required for HF Broadcasting", TR90-268, shows that using the IFRB's Improved HFBC Planning Method and double sideband emissions to satisfy all requirements contained in the IFRB's J-90 Tentative High Frequency Broadcast Schedule would require three to four times as much spectrum as that allocated by WARC-79. TR90-268 is available from NTIA.

[5] The bands considered were those at 17 MHz and below, where the vast majority of broadcasting occurs. The bands above 17 MHz are less crowded because the demand for them is lower.

[6] Report by the IFRB on the Results of the Planning Exercises, HFBC-87 Document 11-E, 23 February 1987, p. 28.

[7] Some of the band segments proposed by Jacobs are shared with the mobile service on either a primary (co-equal) or secondary basis.

[8] *See* comments of George Jacobs at page 5.

[9] *Radio Regulation* 342 provides that administrations can make assignments to stations in derogation of the international Table of Frequency Allocations only on the express condition that harmful interference not be caused to those stations operating in accordance with the provisions of the Convention and Radio Regulations.

[10] While it does not directly address additional HF broadcasting spectrum, the RTCM states that HF maritime bands are heavily used and require an additional allocation. Thus, it urges that the spectrum allocations made to the maritime services be maintained.

[11] *See* Proposals for the Allocations Table in the Bands Below 27.5 MHz, WARC-79 Document No. 43-E, April 2, 1979.

[12] A reaccommodation procedure for existing users was adopted by WARC-79 (Resolution 8) that prevented usage by broadcasters until July 1, 1989 for bands above 10 MHz and July 1, 1994 for the 9 MHz band. HFBC-87 adopted Resolution 512, whereby the bands above 10 MHz will not come into use until a date to be established at a future planning conference that is currently scheduled for the first quarter of 1993.

[13] *See* Final Protocol Statement Nos. 36 and 38 of the Final Acts of WARC-79.

[14] A frequency-hour is one transmitter using one frequency for one hour on a daily basis. One transmitter can operate a maximum of 24 frequency-hours. There is no limit as to the number of transmitters that each station can use.

[15] This includes the expansion bands, which were identified by WARC-79 to be reallocated from the fixed service to the broadcasting service following a planning conference, and other bands currently allocated to the fixed and mobile services.

[16] Further, it must be recognized that since jamming is a political decision, it can be discontinued one day, and started the next, albeit in different regions.

[17] The IAC's Informal Working Group 1 (IWG 1), document No. 15, page 3, states that the latest edition of the IFRB's Tentative High Frequency Broadcasting Schedule indicates that the Soviet Union has added numerous new 20 kilowatt transmitters that evidently were previously used as jammers. The report includes data collected by Deutsche Welle (Voice of Germany) from previous tentative schedules, indicating that Soviet usage has increased from 2977 to 5011 frequency-hours daily from March 1987 to March 1990, an increase of over 68%.

[18] In accordance with *Radio Regulation* 342, for the current Z-90 (30 March 1990 - 30 September 1990) broadcasting season, of the approximately 771.75 frequency-hours authorized for FCC licensees, 364.25 (47%) are in bands not currently available to broadcasting operations.

[19] This includes the 850 kilohertz allocated by WARC-79, but does not include the 200 kilohertz at 7100-7300 kHz, which can be used only in Regions 1 and 3, subject to strict limits established to protect the Amateur service in Region 2. At this time, only a few Commission licensees with facilities located in Region 3 are able to use this spectrum.

[20] Of this amount, 245 kilohertz is presently allocated to broadcasting only in the tropical zone. IWG 1 proposes that this restriction be removed to allow worldwide broadcast use. A comparison between IWG 1's proposal and that of the Commission is shown in Appendix C. Interested parties are requested to consider these alternative proposals and to comment upon them.

[21] Jacobs specific proposal was to add the segment 5850-5950 kHz to the existing broadcast band which starts at 5950 kHz and ends at 6200 kHz. Since the majority of the spectrum in the band is at 6 MHz, it is referred to as the 6 MHz band.

[22] *Radio Regulation* 136 defines reduced carrier SSB as an SSB emission in which the degree of carrier suppression enables the carrier to be reconstituted and to be used for demodulation.

[23] The reaccommodation procedure adopted by WARC-79 effectively postponed use by the broadcast service of the bands above 10 MHz for 10 years and of the bands below 10 MHz for 15 years. If the results of WARC-92 are similar, the new dates would be 2002 and 2007, respectively. Those dates are very close to the current SSB conversion date of 2015.

[24] The use of RSSB does not automatically produce twice the number of available channels. Although DSB emissions occupy 10 kilohertz of bandwidth versus 5 kilohertz for RSSB emissions and the nominal channel spacing for DSB is 10 kilohertz versus 5 kilohertz for RSSB, DSB channels are interleaved at 5 kilohertz spacing. Such interleaved emissions are selected on the basis of the facilities available and the specific coverage intended. Thus, DSB stations currently employ a form of increased spectrum efficiency through the 5 kilohertz interleaving. Based on this usage, NTIA report TR90-268 shows that DSB emissions require approximately 1.8 times as much spectrum as RSSB to satisfy a given set of requirements.

[25] The actual date in the Resolution is June 30, 2007 at 2359 hours UTC, which is an effective date of July 1, 2007.

[26] The total of 1325 kilohertz represents additional allocations of 1125 kilohertz on a worldwide basis as well as an additional allocation of 200 kilohertz at 7200-7400 kHz for Region 2.

[27] In preparation for WARC-92, the CCIR Joint Interim Working Party, created to develop sharing criteria between those broadcast, fixed, mobile, and amateur services that operate in the HF bands, will focus on developing compatibility considerations as a result of allocating additional spectrum for broadcasting.

[28] *Radio Regulation* (RR) Nos. 406-411 define a geographic area around the equator as the "tropical zone" and RR Nos. 2667-2673 define the specific frequency bands and certain operating constraints. The bands above 3 MHz are: 3200-3400 kHz, 4750-4995 kHz, and 5005-5060 kHz. Although the bands are also allocated to the fixed or fixed and mobile services, broadcasting in the tropical zone has priority. Within these bands broadcasting in the tropical zone is limited to internal national use with a maximum transmitter carrier power of 50 kilowatts.

[29] IWG 1 has suggested, however, that the tropical zone regulations be deleted for one band. *See* Appendix C.

[30] The comments and/or reply comments of those parties favoring additional allocations for mobile services are: American Telephone and Telegraph Co., Associated Public Safety Communications Officers, Inc. (APCO), Communications Satellite Corporation, GEC Plessey Telecommunications, Ltd. and Plessey's subsidiary Stromberg-Carlson Corporation, Global-Wulfsberg Systems, GTE Service Corporation, and the Telecommunications Industry Association, Mobile Communications Division. APCO supports additional allocations for mobile services to provide an international public safety service but otherwise opposes the reallocation of the private operational-fixed microwave spectrum that its members use.

[31] The commenters and/or reply commenters opposing additional allocations for mobile services in the 1700-2450 MHz band or portions thereof are the American Petroleum Institute, American Radio Relay League, Association of American Railroads, Association of Maximum Service Telecasters, State of California, Department of General Services, Telecommunications Division, California Public Safety Radio Association, F. Corporation, George Mason University, Harris Corporation, Farinon Division, Michael R. Kelley, Los Angeles County Sheriff's Department, National Association of State Telecommunications Directors, National ITFS Association, NYNEX Corporation, Ohio Educational Broadcasting Network Commission, Shannondale Wireless, South Carolina Division of Information Resource Management, University of Maryland, Utilities Telecommunications Council, and Wireless Cable Association.

[32] Harris delineates the users by frequency band as follows:

1710-1850 MHz Government

1850-1990 MHz Private Operational-Fixed

1990-2110 MHz Broadcast Auxiliary

2110-2130 MHz Domestic Fixed Public

2130-2150 MHz Private Operational-Fixed

2150-2160 MHz Multipoint Distribution

2160-2180 MHz Domestic Public Fixed

2180-2200 MHz Private Operational-Fixed

2200-2290 MHz Government

2290-2300 MHz Government

2300-2310 MHz Government, Amateur

2310-2390 MHz Mobile, Government and Non-Government

2390-2450 MHz Government, Amateur

2450-2483.5 MHz Private Operational-Fixed

[33] Recommendation 205 (MOB-87) "Future Public Land Mobile Telecommunications Systems" invited the CCIR to study, as a matter of urgency, the technical characteristics and suitable frequency bands for equipment and systems providing public land mobile services. In response, the CCIR established an Interim Working Party 8/13 (IWP 8/13) within Study Group 8 to study this matter (Decision 69-2). The results of this work were incorporated into Report M/8 (rev.IWP) Future Public Land Mobile Telecommunication Systems at the final meetings of Study Group 8. In addition, the IWP 8/13 meeting held in Harrogate, England, July 3-12, 1990, estimated, in its Draft Report to IWP 8/15 on WARC 92 Preparation, that the minimum spectrum bandwidth required for voice and non-voice services is approximately 230 megahertz. The personal station will require a common 60 megahertz of this spectrum amount in order to be able to roam internationally.

[34] Comments of National ITFS Association document the different Commission proceedings since 1963 wherein the Commission continued to recognize and provide for the particular spectrum needs of the educational community. *See* pp. 4-6.

[35] We, however, are recommending a modification to the frequency bands to accommodate U.S. Government proposals for the space research, space operations, and earth exploration-satellite services at 2025-2110 MHz and 2200-2290 MHz. *See* para. 108, *infra*. In addition, we have proposed, as one option, an exclusive broadcasting satellite sound service with a complementary broadcasting service in the 2390-2450 MHz band. *See* para. 103 *infra*.

[36] *See Notice of Inquiry*, GEN Docket No. 90-314, 5 FCC Rcd 3995 (1990).

[37] *See Report and Order*, GEN Docket No. 88-96, 5 FCC Rcd 3861 (1990).

[38] *Id.* at para. 21.

[39] *Id.*

[40] *Notice of Proposed Rule Making*, GEN Docket No. 89-103, 4 FCC Rcd 4173, 4178 (1989). Protocol statement No 58 states:

> "The Delegation of the United States of America formally declares that the USA does not, by signature of those Final Acts on its behalf, accept certain decisions taken by this Conference in regard to the Table of Frequency Allocations and the associated footnotes, and therefore, the USA: In view of the fact that the Conference has unduly restricted allocations for the mobile satellite services in the bands 1530-1559 MHz and 1626.5-1660.5 MHz, states its intention to utilize these bands in the way most appropriate to satisfy its particular mobile satellite services requirements recognizing the priority of AMSS(R) and maritime safety communications."

[41] *See Memorandum Opinion and Order*, GEN Docket No. 84-1234, 4 FCC Rcd 6016 (1989); *see also Notice of Proposed Rule Making*, GEN Docket No. 90-56, 5 FCC Rcd 1255 (1990).

[42] ARINC notes that MOB-87 reduced AMSS(R) allocations to 20 megahertz, allocated 8 megahertz to LMSS on an exclusive basis, allocated 6 megahertz to LMSS on a co-primary basis with MMSS, and allocated 27 megahertz to MMSS on a secondary basis for low data rate use.

[43] Commenters in GEN Docket No. 90-56 express similar concerns about the protection of maritime safety services in the 1530-1544/1626-1645.5 MHz bands. As for the aeronautical bands, AMSC and the Commission are of the view that real time priority and preemptive access can be implemented for the AMSS(R) services.

[44] The Aeronautical Mobile Satellite Service Panel (AMSSP) Working Group of the whole meeting (April 23-27, 1990) forecast that the AMSS(R) spectrum requirement for 2010 will be 8.4-12.1 megahertz (from aircraft) and 9.0-13.2 megahertz (to aircraft) in North America. To this requirement, requirements for Atlantic and Pacific Ocean Region coverage areas must be added in order to obtain the total requirement. This estimate was further refined by the CCIR IWP 8/14 meeting in Melbourne, Australia August 27-September 5, 1990 and the ICAO Communications/Meteorology/Operations Divisional Meeting September 5-28, 1990. The resultant minimum AMSS(R) requirement for each direction worldwide is estimated to be 14.5 megahertz.

[45] *Second Report and Order*, GEN Docket Nos. 84-689 and 84-690, 104 FCC 2d 650, 660-663 and n. 44 (1986).

[46] *Report and Order*, GEN Docket Nos 84-689 and 84-690, 50 FR 39,101 (September 27, 1985) at paras. 12-14 and Appendix D. *See also Second Report and Order*, GEN Docket Nos. 84-689 and 84-690, *supra*, at 668.

[47] Starsys has filed a similar, although technically different, spectrum allocation proposal for low-earth orbiting satellites. The Starnet system consists of 24 LEO satellites operating in the 137-138 MHz and 148-149.9 MHz bands using as one option pseudo-random-noise code division multiple access (CDMA) techniques. Its alternative option is to provide ten channels using frequency division multiple access (FDMA) and four channels using time division multiple access (TDMA). *See* RM-7399.

[48] The Executive Branch does not agree with this option because of the adverse effect on radiolocation operations in the 420-421 MHz band.

[49] NPR and ABS filed comments; VOA filed reply comments; SCD Radio and AFRISPACE filed late comments.

[50] *See generally, Notice Of Inquiry*, GEN Docket No. 90-357, 5 FCC Rcd 5237 (1990). SCD Radio proposes 60 megahertz of spectrum in the 1470-1530 MHz band for BSS (Sound) on a primary basis. The same 60 megahertz would be allocated on a secondary basis to the broadcasting service (terrestrial repeaters) and to the mobile service (aeronautical telemetering). Footnotes would limit mobile use to areas outside metropolitan areas. An additional 10.2 megahertz is proposed for an independent terrestrial broadcasting service (1459.8-1470.0 MHz). The 1465.8-1470 MHz band would be an exclusive broadcasting service while the other six megahertz would be shared with the mobile service.

[51] The AFRISTAR system would provide three transponders of 19.8 megahertz for broadcasting in three satellite coverage zones to Africa and the Middle East. Each transponder would support sixty-six 300 kilohertz channels of sound programming. The uplink feeder frequencies are proposed in the 29.9 GHz band with the downlinks to the user population at 1470-1530 MHz. Initially, AFRISTAR would provide three channels of service in each of the three regional coverage zones (2.7 megahertz of bandwidth).

[52] SCD Radio proposes two geostationary satellites at 103 and 121 degrees West Longitude. Each satellite would provide a total of 99 channels, 33 channels each in the Eastern, Western, and Central beams covering the United States. The two satellites together would therefore provide a total of 66 channels to each of these three regions. Another 34 channels in each beam area would be provided by high-powered terrestrial transmitters to provide coverage in urban canyons. The feeder links (60 megahertz of spectrum) would operate in the 27.5-29.5 GHz band, with the BSS (Sound) transmissions in the 1470-1530 MHz band.

[53] *See* footnote 50, *supra*.

[54] *See* Strothers Communications (Strothers) Petition for Rule Making for a Digital Audio Broadcasting service. The general issues implicated in that petition are being addressed in the *Notice of Inquiry* in GEN Docket No. 90-357, referenced in footnote 50, *supra*. We note that Strothers does not propose any specific band, but requests that 48 megahertz be made available from within the band 225-2700 MHz. The UHF TV band is one of five options being considered by Strothers.

[55] The Executive Branch does not agree with this option because of the adverse effect on aeronautical test and telemetry operations.

[56] Thirty-two megahertz of spectrum would provide eight transponders of four megahertz each. Ten megahertz of spectrum could satisfy 33 multiplex sound channels under the SCD Radio proposal and eight megahertz could satisfy 32 multiplex sound channels under the Strothers approach.

[57] The proposal for this consequence of the second option is not included within the proposals attached.

[58] *See First Report and Order*, GEN Docket No. 87-389, 4 FCC Rcd 3493, 3502 (1989).

[59] *See NOI*, *supra*, at para. 20.

[60] Region 1 and 3 BSS plans are based upon 27 megahertz wide channels, whereas the Region 2 BSS plan is based upon 24 megahertz wide channels.

[61] *See e.g.*, CCIR Report No. 999, "Determination of Bidirectional Coordination Area," CCIR Vol. IV, Part 1 (1986); CCIR Report No. 1005, "Frequency Sharing Between Systems of the Fixed Service and Systems of the Fixed Satellite Service Comprising Forward Band Working (FBW) and Return Band Working (RBW) Networks," CCIR Vols. IV & IX, Part 2 (1986).

[62] *See* CCIR Report 801-3 (Mod F), *The Present State of HDTV*.

[63] These six frequency bands, as well as the 30-31.3 GHz band, are being examined in the CCIR forum for possibility of sharing between the Space Research Service and existing services in these bands.

[64] *See e.g., Notice of Proposed Rule Making*, GEN Docket No. 90-56, 5 FCC Rcd 1255 (1990); *see also Report and Order*, GEN Docket Nos. 84-1231, 84-1233, and 84-1234, 2 FCC Rcd 1825 (1986), *recon. denied, Memorandum Opinion and Order*, GEN Docket Nos. 84-1231, 84-1233, and 84-1234, 2 FCC Rcd 6830 (1987), *further recon. denied, Memorandum Opinion and Order*, GEN Docket No. 84-1234, 4 FCC Rcd 6016 (1989).

[65] Text of PLEN/8 is included in Appendix A to the *NOI*.

[66] *See* Chapter IV, Regulation 15, Maintenance Requirements, Final Text of Amendments to the International Convention for the Safety of Life at Sea (SOLAS) 1974 Concerning Radiocommunications for the Global Maritime Distress and Safety System (GMDSS). These Amendments were accepted February 1, 1990, under IMO Rules of Amendment, and are effective February 1, 1992.

[67] Document 73 (Secretary-General) Plenipotentiary Conference of the ITU, Nice, France, 1989.

[68] Romania was the only country in the IMO to object to the GMDSS subsequent to the IMO decision during the 15 month period set-aside for objections and leading to acceptance of SOLAS provisions for the GMDSS on February 1, 1990. Sixty-six governments, including Romania, essentially representing the countries engaged in international shipping commerce in the world and essentially comprising the shipping tonnage listed with Lloyd's of London, participated in the decision by IMO in 1988 to adopt the GMDSS, including the Maintenance Regulation IV/15, *vis-a-vis* the ITU decision on Articles 55 and 56 taken the year before.

UNITED STATES PROPOSALS

for the

WORLD ADMINISTRATIVE RADIO CONFERENCE

(SPAIN, 1992)

WASHINGTON, D.C.

September, 1990

METHOD OF PRESENTATION

1. Services shown in all capital letters (*e.g.*, FIXED) in the Allocation Table are services with primary status.

2. Services shown with an initial capital letter and the remaining letters in lower case (*e.g.*, Fixed) in the Allocation Table are services with secondary status.

3. Underlining (*e.g.*, Underline) indicates new text proposed for adoption.

4. Struck out text (*e.g.*, ~~Strikeout~~) indicates existing text proposed for deletion.

5. NOC indicates provisions for which no change is being proposed.

6. NOC indicates matter of special significance, for which it is important that no changes be made to the current provisions.

7. SUP indicates provisions which are proposed for suppression.

8. MOD indicates a proposed modification to the existing text.

9. (MOD) indicates proposed modifications which are strictly editorial in nature.

10. ADD indicates new provisions which are being proposed for addition.

PROPOSALS TO AMEND THE RADIO REGULATIONS

CHAPTER I

Terminology

ARTICLE 1

Terms and Definitions

Section III. Radio Services

MOD 24 3.5 Inter-Satellite Service: A space radiocommunication service providing links between ~~artificial earth satellites~~ space stations.

Reasons:

1. The proposed modification provides a more general definition to support other space-to-space communication links which are excluded by the text of the current definition.

2. A modification is required to permit communications such as:

links between deep space spacecraft and Earth-orbiting data relay satellites;

links between Earth-orbiting data relay satellites and data relay satellites orbiting around other celestial bodies.

ADD 47bis 3.28bis Radiolocation-Satellite Service: A radiodetermination-satellite service used for the purpose of radiolocation.

This service may also include feeder links necessary for its operation.

Reason:

To provide a radiodetermination-satellite service that specifically does not include radionavigation and the "safety-of-life" aspects associated with radionavigation.

MOD 52 3.33 Space Research Service: A radiocommunication service in which spacecraft or other objects in space are used or human activities are performed for scientific or technological research purposes, and the information resulting from such research may be distributed to earth stations within the system concerned.

Reason:

The modification adds manned space flight activities to the definition and, in analogy to definition RR 48 (Earth exploration-satellite service), provides for the transmission of data from such research to earth stations.

CHAPTER III

Frequencies

ARTICLE 8

Frequency Allocations

Section IV. Table of Frequency Allocations

kHz
5730 - 6200

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	5730 - ~~5950~~ 5900 FIXED LAND MOBILE	5730 - ~~5950~~ 5900 FIXED MOBILE except aero-nautical mobile (R)	5730 - ~~5950~~ 5900 FIXED Mobile except aero-nautical mobile (R)
MOD	~~5730~~ 5900 - 5950 ~~FIXED~~ ~~LAND MOBILE~~ BROADCASTING 521A 521B 521C	~~5730~~ 5900 - 5950 ~~FIXED~~ ~~MOBILE except aero-nautical mobile (R)~~ BROADCASTING 521A 521B 521C	~~5730~~ 5900 - 5950 ~~FIXED~~ ~~Mobile except aero-nautical mobile (R)~~ BROADCASTING 521A 521B 521C
NOC	5950 - 6200 BROADCASTING		

Reason:

To provide additional allocations for the broadcasting service, but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

ADD 521A Emissions limited to single-sideband with characteristics specified in Appendix 45 to the Radio Regulations.

Reason:

To promote additional allocations for broadcasting while utilizing current technology.

ADD 521B The band 5900-5950 kHz is allocated to the fixed and mobile services on a primary basis subject to the procedure described in Resolution BBB. Within this band, the date of commencement of operations in the broadcasting service shall not be earlier than the date of completion of satisfactory transfer, according to the procedures described in Resolution BBB, of all assignments to stations in the fixed and mobile services operating in accordance with the Table and other provisions of the Radio Regulations, which are recorded in the Master Register and which may be affected by broadcasting operations.

Reason:

To protect the fixed and mobile bands until the reaccommodation procedure is completed and to facilitate the reaccommodation procedure in the accompanying Resolution BBB.

ADD 521C On condition that harmful interference is not caused to the broadcasting service, frequencies in the bands 5900-5950 kHz, 7400-7525 kHz, 9350-9500 kHz, 11550-11650 kHz, 13800-13900 kHz, 15600-15700 kHz, 17450-17550 kHz, and 18900-19300 kHz may be used by stations in the fixed and mobile services. The broadcasting service will exercise technical constraints that facilitate access to the bands by the fixed and mobile service. Use of these frequency bands by the fixed and mobile services will take appropriate account of broadcast schedules published in accordance with the Radio Regulations.

Reason:

Recognizing the continued need for use of the spectrum by the fixed and mobile services and the necessity of using the HF spectrum in the most efficient manner, this approach allows the broadcasting service to obtain and use additional spectrum while providing for fixed and mobile use where feasible. It is not intended to replace the requirement to accommodate existing fixed and mobile service assignments displaced by the allocation of spectrum to the broadcasting services. Rather, it allows for opportune access to the bands for itinerant fixed and mobile operations that may not require dedicated frequency assignments.

kHz
6765 - 7300

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	6765 - ~~7000~~ 6900	FIXED Land Mobile 525 524	
MOD	~~6765~~ 6900 - 7000	~~FIXED~~ AMATEUR 510 AMATEUR-SATELLITE Land Mobile 525 525A	
NOC	7000 - 7100	AMATEUR 510 AMATEUR-SATELLITE 526 527	
MOD	7100 - ~~7300~~ 7200 ~~BROADCASTING~~ AMATEUR 510 AMATEUR-SATELLITE	7100 - ~~7300~~ 7200 AMATEUR 510 AMATEUR-SATELLITE ~~528~~	7100 - ~~7300~~ 7200 ~~BROADCASTING~~ AMATEUR 510 AMATEUR-SATELLITE
MOD	~~7100~~ 7200 - 7300 BROADCASTING	~~7100~~ 7200 - 7300 ~~AMATEUR 510~~ BROADCASTING ~~528~~ 528A	~~7100~~ 7200 - 7300 BROADCASTING

Reason:

1. To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant

fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

2. To expand and realign the exclusive, primary worldwide allocation at 7 MHz for the amateur service as a consequence of the readjustment of the broadcasting service allocations in this part of the spectrum.

ADD 525A The band 6900-7000 kHz is allocated to the fixed service on a primary basis subject to the procedure described in Resolution BBB. Within this band, the date of commencement of operations in the amateur service shall not be earlier than the date of completion of satisfactory transfer, according to the procedures described in Resolution BBB, of all assignments to stations in the fixed service operating in accordance with the Table and other provisions of the Radio Regulations, which are recorded in the Master Register and which may be affected by amateur operations.

Reason:

To protect the fixed service until the reaccommodation procedure is completed.

SUP 528

Reason:

With the change in allocation, the restriction is no longer necessary.

ADD 528A The band 7200-7300 kHz is allocated to the amateur service on a primary basis until 1 July 2007, which is the changeover date for the fixed and mobile services as described in Resolution BBB. Within this band, the commencement of operations in the broadcasting service shall not be earlier than that date.

Reason:

To protect the amateur service until the reaccommodation procedure is completed.

kHz
7525 - 8100

Allocation to Services		
Region 1	Region 2	Region 3
MOD 7300 - ~~8100~~ 7525	~~FIXED~~ ~~Land Mobile~~ BROADCASTING 521C 528B 528C	
MOD ~~7300~~ 7525 - 8100	FIXED Land Mobile 529	

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

ADD 528B Emissions in the band 7400-7525 kHz are limited to single-sideband with characteristics specified in Appendix 45 to the Radio Regulations.

Reason:

To promote additional allocations for broadcasting while utilizing current technology.

ADD 528C The bands 7300-7525 kHz, 9350-9500 kHz, 11550-11650 kHz, 13800-13900 kHz, 15600-15700 kHz, 17450-17550 kHz, and 18900-19300 kHz are allocated to the fixed service on a primary basis subject to the procedure described in Resolution BBB. Within these bands, the date of commencement of operations in the broadcasting service shall not be earlier than the date of completion of satisfactory transfer, according to the procedures described in Resolution BBB, of all assignments to stations in the fixed service operating in accordance with the Table and other provisions of the Radio Regulations, which are recorded in the Master Register and which may be affected by broadcasting operations.

Reason:

To protect the fixed service until the reaccommodation process is completed.

kHz
9040 - 9900

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	9040 - ~~9500~~ 9350 FIXED		
MOD	~~9500~~ 9350 - 9500 ~~FIXED~~ BROADCASTING 521A 521C 528C		
NOC	9500 - 9900 BROADCASTING 530 531		

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

kHz
11 400 - 12 050

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	11 400 - ~~11 650~~ 11 550 FIXED		
MOD	~~11 400~~ 11 550 - 11 650 ~~FIXED~~ BROADCASTING 521A 521C 528C		
NOC	11 650 - 12 050 BROADCASTING 530 531		

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

kHz
13 600 - 14 000

	Allocation to Services		
	Region 1	Region 2	Region 3
NOC	13 600 - 13 800	BROADCASTING 531	
MOD	13 800 - ~~14 000~~ 13 900	~~FIXED~~ ~~Mobile except aeronautical mobile (R)~~ BROADCASTING 521A 521C 528C	
MOD	~~13 000~~ 13 900 - 14 000	FIXED Mobile except aeronautical mobile (R)	

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

kHz
15 100 - 16 360

	Allocation to Services		
	Region 1	Region 2	Region 3
NOC	15 100 - 15 600 BROADCASTING 531		
MOD	15 600 - ~~16 360~~ 15 700 ~~FIXED~~ BROADCASTING 521A 521C 528C		
MOD	~~15 600~~ 15 700 - 16 360 FIXED 536		

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

kHz
17 410 - 17 900

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	17 410 - ~~17 550~~ 17 450 FIXED		
MOD	~~17 410~~ 17 450 - 17 550 ~~FIXED~~ BROADCASTING 521A 521C 528C		
NOC	17 550 - 17 900 BROADCASTING 531		

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

kHz
18 900 - 19 680

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	18 900 - ~~19 680~~ 19 300 ~~FIXED~~ BROADCASTING 521A 521C 528C		
MOD	~~18 900~~ 19300 - 19 680 FIXED		

Reason:

To provide additional allocations for the broadcasting service but only on the basis of SSB while at the same time permitting access for itinerant fixed and mobile use on a secondary basis. Reaccommodation of existing users would have to be accomplished in accordance with Resolution BBB.

MHz
137 - 138

Allocation to Services		
Region 1	Region 2	Region 3
MOD 137 - 138		
SPACE OPERATION (space-to-Earth)		
METEOROLOGICAL-SATELLITE (space-to-Earth)		
SPACE RESEARCH (space-to-Earth)		
Fixed		
Mobile except aeronautical mobile (R)		
Mobile-Satellite (space-to-Earth) 596A		
596 597 598 599		

ADD 596A The mobile-satellite service is limited to low earth orbit satellite systems.

Reason:

To provide a mobile-satellite service (space-to-Earth) allocation for low earth orbit satellite systems.

MHz
146 - 149.9

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	146 - ~~149.9~~ 148 FIXED MOBILE except aero-nautical mobile (R) ~~608~~	146 - 148 AMATEUR 607	146 - 148 AMATEUR FIXED MOBILE 607
MOD	~~146~~ 148 - 149.9 FIXED MOBILE except aero-nautical mobile (R) Mobile-Satellite (Earth-to-space) 596A 608	148 - 149.9 FIXED MOBILE Mobile-Satellite (Earth-to-space) 596A 608	

Reason:

To provide a mobile-satellite service (space-to-Earth) allocation for low earth orbit satellite systems.

MHz
410 - 420

MOD

Allocation to Services		
Region 1	Region 2	Region 3
410 - 420 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (Space-to-space) 651A		

ADD 651A Use of this allocation is limited to communication links within 5 km of an orbiting, manned space vehicle. The power flux density produced at the earth's surface shall not exceed [xxx] dBW/m^2/4 kHz.

Reason:

To provide an allocation for a new space service application concerning communications with manned space vehicles. The extra-vehicular activity (EVA) system is to provide communications among astronauts and base spacecraft while astronauts are performing activities outside the base spacecraft, e.g., maintenance.

MHz
420 - 430

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	420 - ~~430~~ 421 ~~FIXED~~ ~~MOBILE except aeronautical mobile~~ ~~Radiolocation~~ MOBILE-SATELLITE (space-to-Earth) 596A ~~651~~ MOD 652 653		
MOD	~~420~~ 421 - 430 FIXED MOBILE except aeronautical mobile Radiolocation MOD 651 MOD 652 653		

MOD 651 Different category of service: in Australia, the United States, India, Japan, and the United Kingdom, the allocation of the bands ~~420~~ 421 -430 MHz and 440 - 450 MHz to the radiolocation service is on a primary basis (see No. 425).

MOD 652 Additional Allocation: in Australia, the United States, Jamaica and the Philippines, the bands ~~420~~ 421 - 430 MHz and 440 - 450 MHz are also allocated to the amateur service on a secondary basis.

Reasons:

1. To provide a mobile-satellite (space-to-Earth) allocation for low earth orbit satellite systems.

2. MOD 651 is consequential to the addition of the mobile-satellite service (space-to-Earth) on an exclusive primary basis.

MHz
470 -890

Allocation to Services		
Region 1	Region 2	Region 3
470 - 790 BROADCASTING	470 - 512 BROADCASTING Fixed Mobile 674 675	470 - 585 FIXED MOBILE BROADCASTING 673 677 679
	512 - 608 BROADCASTING 678	585 - 610 FIXED MOBILE BROADCASTING RADIONAVIGATION 688 689 690
	608 - 614 RADIO ASTRONOMY Mobile-Satellite except aeronautical mobile-satellite (Earth-to-space)	
676 677A 682 683 684 685 686 686A MOD 687 689 693 693A 694	614 - 806 BROADCASTING Fixed Mobile 675 692 692A 693 693A	610 - 890 FIXED MOBILE BROADCASTING
790 - 862 FIXED MOD BROADCASTING 694 695 695A 696 697 702		
862 - 890 FIXED MOBILE except aeronautical mobile BROADCASTING 703	806 - 890 FIXED MOBILE BROADCASTING	
MOD 704	692A 700	677 688 689 693A 690 691 693 701

ADD 693A The frequency band 728 -788 MHz is also allocated to the broadcasting-satellite service for the provision of sound programs.

Reason:

This proposal is one of three possible proposals to provide an allocation for Broadcasting-Satellite Service (sound).

MHz
890 -942

Allocation to Services		
Region 1	Region 2	Region 3
890 - 942 FIXED MOBILE except aero-nautical mobile BROADCASTING 703 Radiolocation	890 - 902 FIXED MOBILE except aero-nautical mobile Radiolocation 704A 705	890 - 942 FIXED MOBILE BROADCASTING Radiolocation
	902 - 928 FIXED Amateur Mobile except aero-nautical mobile Radiolocation 705 707 707A	
	928 - 942 FIXED MOBILE except aero-nautical mobile Radiolocation	
MOD 704 705A	705 705A	706 705A

ADD 705A The 930 -931 MHz band is allocated on a primary basis to the mobile-satellite service (Earth-to-space) and is limited to low earth orbit satellite systems, subject to agreement obtained under the procedure set forth in Article 14.

Reason:

To provide a mobile-satellite service (Earth-to-space) allocation for low earth orbit satellite systems.

MHz
1429-1525

Allocation to Services		
Region 1	Region 2	Region 3
MOD 1429 - ~~1525~~ 1493 FIXED MOBILE except aero-nautical mobile 722	1429 - ~~1525~~ 1493 FIXED MOBILE MOD 723 722	
MOD ~~1429~~ 1493 - 1525 ~~FIXED~~ ~~MOBILE except aero-nautical mobile~~ BROADCASTING-SATELLITE (sound) BROADCASTING 722	~~1429~~ 1493 - 1525 ~~FIXED~~ ~~MOBILE 723~~ BROADCASTING-SATELLITE (sound) BROADCASTING 722	

MOD 723 In Region 2, in Australia and Papua New Guinea, the use of the band 1435 - ~~1535~~ 1493 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

Reason:

This proposal is one of three possible proposals herein attempting to provide an allocation for the Broadcasting-Satellite Service (sound) and a complementary Broadcasting Service. As a consequence to this proposal, we will need to reaccommodate flight, test and telemetry operations. (See Second NOI, ¶ 102)

MHz
1525 - 1530

MOD

Allocation to Services		
Region 1	Region 2	Region 3
1525 - 1530	1525 - 1530	1525 - 1530
SPACE OPERATION (Space-to-Earth)	SPACE OPERATION (Space-to-Earth)	SPACE OPERATION (Space-to-Earth)
MOBILE-SATELLITE (Space-to-Earth)	MOBILE-SATELLITE (Space-to-Earth)	MOBILE-SATELLITE (Space-to-Earth)
~~FIXED~~		~~FIXED~~
Fixed 723B	Fixed	Fixed 723B
Earth Exploration-Satellite	Earth Exploration-Satellite	Earth Exploration-Satellite
Mobile except aeronautical mobile 724	Mobile ~~723~~	Mobile ~~723~~ 724
722 725	722 723A	722

ADD 723B Fixed service operations can continue on a primary basis until January 1, 1997.

Reason:

To provide an allocation for the mobile-satellite service and to ensure the flexibility to stimulate the developing requirements for this service.

MHz
1530 - 1533

MOD

Allocation to Services		
Region 1	Region 2	Region 3
1530 - 1533 SPACE OPERATION (Space-to-Earth) ~~MARITIME MOBILE-SATELLITE (Space-to-Earth)~~ ~~LAND MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) Earth Exploration-Satellite Fixed Mobile except aeronautical mobile 722 ~~726~~ 726A 726C	1530 - 1533 SPACE OPERATION (Space-to-Earth) ~~MARITIME MOBILE-SATELLITE (Space-to-Earth)~~ ~~LAND MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) Earth Exploration-Satellite Fixed Mobile ~~723~~ 722 ~~726~~ 726A 726C	

SUP 726

ADD 726C In the frequency bands 1530-1544 MHz and 1626.5-1645.5 MHz maritime mobile-satellite distress and safety communications, e.g., GMDSS, shall have priority access with real-time preemptive capability in the mobile-satellite service. Communications of mobile-satellite system stations not participating in the GMDSS shall operate on a secondary basis to distress and safety communications of stations operating in the GMDSS. Account shall be taken of the priority of safety-related communications in the mobile-satellite service.

Reason:

To provide an allocation for the mobile-satellite service and to ensure the flexibility to stimulate the developing requirements for this service while providing protection for safety and distress communications in the maritime mobile-satellite service. The suppression of RR 726 is consequential to these proposals and the expiration of the effectiveness date.

MHz
1533 - 1544

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	1533 - 1535 SPACE OPERATION (Space-to-Earth ~~MARITIME MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) ~~Land Mobile-Satellite (Space-to-Earth) 726B~~ Earth Exploration-Satellite Fixed Mobile except aeronautical mobile 722 ~~726~~ 726A 726C	1533 - 1535 SPACE OPERATION (Space-to-Earth) ~~MARITIME MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) ~~Land Mobile-Satellite (Space-to-Earth) 726B~~ Earth Exploration-Satellite Fixed Mobile ~~723~~ 722 ~~726~~ 726A 726C	
MOD	1535 - 1544 ~~MARITIME MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) ~~Land Mobile-Satellite (Space-to-Earth) 726B~~ 722 726A 726C 727		

SUP 726B
Mob-87

Reason:

To provide an allocation for the mobile-satellite service and to ensure the flexibility to stimulate the developing requirements for this service while providing protection for safety and distress communications in the maritime mobile-satellite service.

MHz
1545 - 1559

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	1545 - 1555 ~~AERONAUTICAL MOBILE-SATELLITE (R) (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) 722 726A 727 729 ~~729A~~ 730 730B		
MOD	1555 - 1559 ~~LAND MOBILE-SATELLITE (Space-to-Earth)~~ MOBILE-SATELLITE (Space-to-Earth) 722 726A 727 730 ~~730A~~ 730B		

SUP 729A
Mob-87

SUP 730A
Mob-87

ADD 730B The aeronautical mobile-satellite (R) service shall have priority access with real-time preemptive capability over all other communications in the mobile-satellite service. Systems not interoperable with the aeronautical mobile-satellite (R) service shall operate on a secondary basis. Account shall be taken of the priority of safety-related communications in the other mobile-satellite services.

Reason:

To provide an allocation for the mobile-satellite service while maintaining the flexibility to provide for developing requirements in the aeronautical mobile-satellite (R) service while providing protection for safety and distress communications in the aeronautical mobile-satellite (R) service.

MHz
1610 - 1631.5

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	1610 - 1626.5 AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 733A MOBILE-SATELLITE (Earth-to-space) 722 727 730 731 731A 731B 731D 732 ~~733~~ 733B ~~733E~~ ~~733A~~ ~~733F~~ 734 733Z	1610 - 1626.5 AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 733A ~~733E~~ MOBILE-SATELLITE (Earth-to-space) 722 731B 731C 732 ~~733~~ 733C 733D 734 733Z	1610 - 1626.5 AERONAUTICAL RADIONAVIGATION ~~Radiodetermination-Satellite (Earth-to-space) 733A 733E~~ RADIODETERMINATION-SATELLITE (Earth-to-space) 733A MOBILE-SATELLITE (Earth-to-space) 722 727 730 731B 731C 732 ~~733~~ 733B 734 733Z
MOD	1626.5 - 1631.5 ~~MARITIME MOBILE-SATELLITE (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) ~~Land Mobile-Satellite (Earth-to-space) 726B~~ 722 726A 726C 727 730		

MOD 733 The bands ~~1610-1626.5 MHz,~~ 5000-5250 MHz, and 15.4-15.7 GHz are also allocated to the aeronautical mobile-satellite (R) service on a primary basis. Such use is subject to agreement obtained under the procedure set forth in Article 14.

SUP 733E
Mob-87

SUP 733F
Mob-87

ADD 733Z The radiodetermination-satellite service and the mobile-satellite service are limited to using compatible code division multiple access modulation characteristics.

Reason:

To provide additional allocations for the mobile-satellite service. Since the radiodetermination-satellite service and mobile-satellite service will have compatible characteristics it is necessary as a consequence to upgrade the radiodetermination-satellite service in Regions 1 and 3 to a co-primary service with the mobile-satellite service. Further study is required to determine how to regulate the RDSS and MSS to have these characteristics. Additional sharing criteria are also required for other services.

MHz
1631.5 - 1645.5

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	1631.5 - 1634.5 ~~MARITIME MOBILE-SATELLITE (Earth-to-space)~~ ~~LAND MOBILE-SATELLITE (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) 722 726A 726C 727 730 734A		
MOD	1634.5 - 1645.5 ~~MARITIME MOBILE-SATELLITE (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) ~~Land Mobile Satellite (Earth-to-space) 726B~~ 722 726A 726C 727 730		

Reason:

To provide an allocation for the mobile-satellite service and to ensure the flexibility to stimulate the developing requirements for this service while providing protection for safety and distress communications in the maritime mobile-satellite service.

MHz
1646.5 - 1660.5

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	1646.5 - 1656.5 ~~AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) 722 726A 727 729A 730 730B 735		
MOD	1656.5 - 1660 ~~LAND MOBILE-SATELLITE (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) 722 726A 727 730 ~~730A~~ 730B 734A		
MOD	1660 - 1660.5 RADIO ASTRONOMY ~~LAND MOBILE-SATELLITE (Earth-to-space)~~ MOBILE-SATELLITE (Earth-to-space) 736A 722 726A ~~730A~~ 736 730B		

ADD 736A Aeronautical Mobile-Satellite Service (R) is the only aeronautical mobile-satellite service permitted in this band consistent with ADD 730B.

Reason:

To provide an allocation for the mobile-satellite service while maintaining the flexibility to provide for developing requirements in the aeronautical mobile-satellite (R) service.

MHz
1710 - 2200

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	1710 - ~~2290~~ 2025 FIXED Mobile 722 743A 744 746 ~~747~~ ~~748~~ ~~750~~	1710 - ~~2290~~ 2025 FIXED MOBILE 722 744 745 746 ~~747~~ ~~748~~ ~~749~~ ~~750~~	
MOD	~~1710~~ 2025 - ~~2290~~ 2110 FIXED SPACE RESEARCH (Earth-to-space) (Space-to-space) SPACE OPERATION (Earth-to-space) (Space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (Space-to-space) Mobile ~~722~~ 743A ~~744~~ ~~746~~ ~~747~~ ~~748~~ ~~750~~	~~1710~~ 2025 - ~~2290~~ 2110 FIXED SPACE RESEARCH (Earth-to-space) (Space-to-space) SPACE OPERATION (Earth-to-space) (Space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (Space-to-space) MOBILE ~~722~~ ~~744~~ ~~745~~ ~~746~~ ~~747~~ ~~748~~ ~~749~~ ~~750~~	
MOD	~~1710~~ 2110 - ~~2290~~ 2200 FIXED Mobile ~~722~~ 743A ~~744~~ ~~746~~ ~~747~~ 748 ~~750~~	~~1710~~ 2110 - ~~2290~~ 2200 FIXED MOBILE ~~722~~ ~~744~~ ~~745~~ ~~746~~ ~~747~~ 748 749 ~~750~~	

MHz
2200 - 2290

MOD

Allocation to Services		
Region 1	Region 2	Region 3
~~1710~~ 2200 - 2290 FIXED SPACE RESEARCH (Space-to-Earth) (Space-to-space) SPACE OPERATION (Space-to-Earth) (Space-to-space) EARTH EXPLORATION-SATELLITE (Space-to-Earth) (Space-to-space) Mobile ~~722~~ 743A ~~744~~ ~~746~~ ~~747~~ ~~748~~ ~~750~~	~~1710~~ 2200 - 2290 FIXED SPACE RESEARCH (Space-to-Earth) (Space-to-space) SPACE OPERATION (Space-to-Earth) (Space-to-space) EARTH EXPLORATION-SATELLITE (Space-to-Earth) (Space-to-space) MOBILE ~~722~~ ~~744~~ ~~745~~ ~~746~~ ~~747~~ ~~748~~ ~~749~~ ~~750~~	

SUP 747

SUP 750

Reasons:

1. To provide a primary allocation for space services that support safety communications for satellites and manned space flight missions; to eliminate the Article 14 coordination requirement for these services.

2. In order to protect the fixed and mobile operations, the PFD limit in No. 2559 will be extended to these bands.

3. Deletion of footnotes 722, 744, 745, 746, 748, and 749; and the suppression of footnotes 747 and 750 in the various bands is a consequence of the primary allocation to the space research, space operation, and earth exploration-satellite services under the new proposed band limits.

MHz
2300 - 2483.5

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	2300 - ~~2450~~ 2390 FIXED Amateur Mobile Radiolocation ~~664~~ ~~752~~ 743A	2300 - ~~2450~~ 2390 FIXED MOBILE RADIOLOCATION Amateur ~~664~~ 751 ~~752~~	
MOD	~~2300~~ 2390 - 2450 ~~FIXED~~ ~~Amateur~~ ~~Mobile~~ ~~Radiolocation~~ BROADCASTING-SATELLITE (sound) BROADCASTING ~~664~~ MOD 752	~~2300~~ 2390 - 2450 ~~FIXED~~ ~~MOBILE~~ ~~RADIOLOCATION~~ ~~Amateur~~ BROADCASTING-SATELLITE (sound) BROADCASTING ~~664~~ ~~751~~ MOD 752	
	2450 - 2483.5 FIXED MOBILE Radiiolocation MOD 752 753	2450 - 2483.5 FIXED MOBILE RADIOLOCATION MOD 752	

MOD 664 In the bands 435-438 MHz, 1260-1270 MHz, ~~2400-2450 MHz,~~ 3400-3410 MHz (in Regions 2 and 3 only), and 5650-5670 MHz, the amateur-satellite service may operate subject to not causing harmful interference to other services operating in accordance with the Table (see No. 435). Administrations authorizing such use shall ensure that any harmful interference caused by emissions from a station in the amateur-satellite service is immediately eliminated in accordance with the provisions of No. 2741. The use of the bands 1260-1270 MHz and 5650-5670 MHz by the amateur-satellite service is limited to the Earth-to-space direction.

MOD 752 The band ~~2400~~ 2420 - ~~2500~~ 2480 MHz (centre frequency 2450 MHz) is designated for industrial, scientific and medical (ISM) applications. Radio services operating within this band must accept harmful interference which may be caused by these applications. ISM equipment operating in this band is subject to the provisions of No. 1815.

Reason:

This proposal is one of three possible proposals to provide an allocation for the Broadcasting-Satellite (sound) Service and a complementary broadcasting service. MOD 752 is a consequential proposal to facilitate the accommodation of this reallocation proposal.

MHz
2483.5 - 2500

Allocation to Services		
Region 1	Region 2	Region 3
MOD 2483.5 - 2500 FIXED MOBILE RADIODETERMINATION-SATELLITE (Space-to-Earth) 753A MOBILE-SATELLITE (Space-to-Earth) Radiolocation 733F ~~752~~ ~~753A~~ 753B ~~753C~~ 753E 733Z	2483.5 - 2500 FIXED MOBILE RADIODETERMINATION-SATELLITE 753A (Space-to-Earth) MOBILE-SATELLITE (Space-to-Earth) RADIOLOCATION ~~752~~ 753D 733Z	2483.5 - 2500 FIXED MOBILE RADIODETERMINATION-SATELLITE (Space-to-Earth 753A ~~Radiodetermination-Satellite (Space-to-Earth) 753A~~ MOBILE-SATELLITE (Space-to-Earth) RADIOLOCATION ~~752~~ ~~753C~~ 733Z

SUP 753C
Mob-87

Reason:

To provide additional allocations for the mobile-satellite service. Since the radiodetermination-satellite service and the mobile-satellite service will have compatible characteristics, it is necessary as a consequence to upgrade the radiodetermination-satellite service in Regions 1 and 3 to a co-primary service with the mobile-satellite service.

GHz
11.7 - 12.75

MOD

Allocation to Services		
Region 1	Region 2	Region 3
11.7 - 12.5 FIXED BROADCASTING BROADCASTING-SATELLITE Mobile except aeronautical mobile 838 838A	11.7 - 12.1 FIXED 837 FIXED-SATELLITE (space-to-Earth) Mobile except aeronautical mobile 836 839	11.7 - 12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE
	12.1 - 12.2 FIXED-SATELLITE (space-to-Earth) 836 839 842	838 838A
	12.2 - 12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 839 844 846 838A	12.2 - 12.5 FIXED MOBILE except aeronautical mobile BROADCASTING 838 845
12.5 - 12.75 FIXED-SATELLITE (space-to-Earth) (Earth-to-Space) 848 849 850	12.7 - 12.75 FIXED FIXED-SATELLITE MOBILE except aeronautical mobile	12.5 - 12.75 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile BROADCASTING-SATELLITE 847

ADD 838A When implementing broadcasting-satellite systems in this band, administrations should bear in mind the possible use of this band for wide-RF band high definition television via satellite.

Reason:

To provide for the future development of wide-Rf band high definition television from satellite, in accordance with Resolution No. 521.

GHz
14.5 - 14.8

Allocation to Services		
Region 1	Region 2	Region 3
14.5 - 14.8 FIXED FIXED-SATELLITE (Earth-to-space) 863 MOBILE Space Research		

NOC

NOC 863

Reason:

The current allocations are still required.

GHz
17.3 - 17.7

Allocation to Services		
Region 1	Region 2	Region 3
17.3 - 17.7 FIXED-SATELLITE (Earth-to-space) 869 Radiolocation BROADCASTING-SATELLITE 868A		

MOD

ADD 868A Reserved for wide RF-Band High Definition Television. To be implemented in accordance with the procedures of RES XXX. (to be developed)

Reason:

To provide an alternative allocation to meet HDTV-BSS requirements that may not be able to be satisfied in the 12 GHz BSS allocations.

GHz
19.7 - 20.2

MOD

Allocation to Services		
Region 1	Region 2	Region 3
19.7 - 20.2 FIXED-SATELLITE (space-to-Earth) ~~Mobile-Satellite (space-to-Earth)~~ MOBILE-SATELLITE (space-to-Earth) 873		

Reason:

To provide additional protection for the mobile-satellite service.

GHz
21.4 - 22

MOD

Allocation to Services		
Region 1	Region 2	Region 3
21.4 - 22 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (Space-to-Earth)		

Reasons:

1. To enable the communications support necessary to achieve the stated United States goals of manned exploration of the Moon and Mars.

2. To provide for wideband data return links from Very Long Baseline Interferometry (VLBI) observations by satellite.

3. Provisional proposal as appropriate technical sharing criteria are under development; 1 of 6 alternative bands proposed.

GHz
24.25 - 25.25

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	24.25 - 25.25 RADIONAVIGATION SPACE RESEARCH (Earth-to-space) RADIOLOCATION-SATELLITE (Earth-to-space)		

Reasons:

1. To enable the communications support necessary to achieve the stated United States goals of manned exploration of the Moon and Mars.

2. To provide for uplinks from Very Long Baseline Interferometry (VLBI) observations by satellite.

3. Provisional proposal as appropriate technical sharing criteria are under development; 2 of 6 alternative bands proposed.

4. To provide for a satellite based location and messaging service.

GHz
25.25-27.5

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	25.25 - 27 FIXED MOBILE INTER-SATELLITE Earth Exploration-Satellite (Space-to-space) Standard Frequency and Time Signal-Satellite (Earth-to-space)		
MOD	27 - 27.5 FIXED MOBILE INTER-SATELLITE 881A Earth Exploration-Satellite (Space-to-space)	27 - 27.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE INTER-SATELLITE 881A Earth Exploration-Satellite (Space-to-space)	

Reasons:

1. To provide a primary allocation for wide bandwidth space-to-space data return links from user spacecraft to the data relay satellite (e.g. US ATDRS) and to provide a primary allocation for wideband links between a permanent Space Station and co-orbiting free flyers.

2. Provisional proposal as appropriate technical sharing criteria are under development.

ADD 881A Non-geostationary space stations operating in the inter-satellite service in the band 27 - 27.5 GHz are exempt from the provisions of RR 2613.

Reason:

RR No. 881A is proposed in order to provide equality to links between non-geostationary and geostationary satellites.

GHz
27.5 - 29.5

Allocation to Services		
Region 1	Region 2	Region 3
27.5 - 29.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 882A		

MOD

ADD 882A Beacon transmissions in the Fixed-Satellite Service (space-to-Earth) are also permitted for the purpose of uplink power control.

Reason:

Significant attenuation occurs in the FSS uplinks in this frequency range. Provision of a downlink beacon in this band will allow operators of FSS systems to provide the necessary adjustments in uplink power during these times of signal attenuation.

GHz
29.5 - 30

Allocation to Services		
Region 1	Region 2	Region 3
29.5 - 30 FIXED-SATELLITE (space-to-Earth) ~~Mobile-Satellite (space-to-Earth)~~ MOBILE-SATELLITE (space-to-Earth) 882 883		

MOD

Reason:

To provide additional protection for the mobile-satellite service.

GHz
31.8 - 32.3

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	31.8 - 32 RADIONAVIGATION SPACE RESEARCH (Deep Space) (Space-to-Earth) ~~Space Research~~ ~~890~~ 891 892		
MOD	32 - 32.3 INTER-SATELLITE RADIONAVIGATION SPACE RESEARCH (Deep Space) (Space-to-Earth) ~~Space Research~~ ~~890~~ 891 892 893		

SUP 890

Reason:

1. The existing primary allocations are applicable only in the United States, Spain and Australia. As support requirements for space activities increase in quantity and complexity, it is becoming critical to be able to use these frequency bands on a worldwide basis for deep space exploration.

2. Provisional proposal as appropriate technical sharing criteria are under development.

GHz
33.4 - 34.2

Allocation to Services		
Region 1	Region 2	Region 3
MOD 33.4 - 34.2 RADIOLOCATION SPACE RESEARCH (Earth-to-space) 892 894		

Reasons:

1. To enable the communications support necessary to achieve the stated United States goals of manned exploration of the Moon and Mars.

2. To provide for uplinks from Very Long Baseline Interferometry (VLBI) observations by satellite.

3. Provisional proposal as appropriate technical sharing criteria are under development; 3 of 6 alternative bands proposed.

GHz
34.2 - 34.7

Allocation to Services		
Region 1	Region 2	Region 3
MOD 34.2 - ~~35.2~~ 34.7 RADIOLOCATION SPACE RESEARCH (Deep Space) (Earth-to-space) Space Research ~~895~~ 896 894		

SUP 895

Reason:

1. The existing primary allocations are applicable only in the United States, Spain and Australia. As support requirements for space activities increase in quantity and complexity, it is becoming critical to be able to use these frequency bands on a worldwide basis for deep space exploration.

2. Provisional proposal as appropriate technical sharing criteria are under development.

GHz
34.7 - 35.2

Allocation to Services		
Region 1	Region 2	Region 3
MOD ~~34.2~~ 34.7 - 35.2 RADIOLOCATION SPACE RESEARCH (Earth-to-space) 896 ~~Space Research 895~~ ~~896~~ 894		

Reasons:

1. To enable the communications support necessary to achieve the stated United States goals of manned exploration of the Moon and Mars.

2. To provide for uplinks from Very Long Baseline Interferometry (VLBI) observations by satellite.

3. Provisional proposal as appropriate technical sharing criteria are under development; 4 of 6 alternative bands proposed.

GHz
37 - 37.5

Allocation to Services		
Region 1	Region 2	Region 3
MOD 37 - 37.5 FIXED MOBILE SPACE RESEARCH (Space-to-Earth) 899		

Reasons:

1. To enable the communications support necessary to achieve the stated United States goals of manned exploration of the Moon and Mars.

2. To provide for wideband data return links from Very Long Baseline

Interferometry (VLBI) observations by satellite.

3. Provisional proposal as appropriate technical sharing criteria are under development; 5 of 6 alternative bands proposed.

GHz
39.5 - 40.5

Allocation to Services		
Region 1	Region 2	Region 3
MOD 39.5 - 40.5 FIXED FIXED-SATELLITE (Space-to-Earth) MOBILE MOBILE-SATELLITE (Space-to-Earth) SPACE RESEARCH (Earth-to-space)		

Reasons:

1. To enable the communications support necessary to achieve the stated United States goals of manned exploration of the Moon and Mars.

2. To provide for up links from Very Long Baseline Interferometry (VLBI) observations by satellite.

3. Provisional proposal as appropriate technical sharing criteria are under development; 6 of 6 alternative bands proposed.

GHz
59 - 64

Allocation to Services		
Region 1	Region 2	Region 3
59 - ~~64~~ 60.7	FIXED INTER-SATELLITE MOBILE 909 RADIOLOCATION 910 911	
~~59~~ 60.7 - ~~64~~ 60.8	~~FIXED~~ ~~INTER-SATELLITE~~ ~~MOBILE 909~~ ~~RADIOLOCATION 910~~ EARTH EXPLORATION-SATELLITE (passive) ~~911~~	
~~59~~ 60.8 - 64	FIXED INTER-SATELLITE MOBILE 909 RADIOLOCATION 910 911	

Reason:

To provide protection for passive microwave sensors observing the oxygen line at 60.792 GHz. This line is vital for the measurement of mesospheric temperatures. Absorption lines in the bands 54 - 59 GHz are too broad and are distorted by the Zeeman effect on the magnetic field. The Zeeman effect on the absorption lines in the 54 - 59 GHz area causes a large error in the temperature retrievals. The Zeeman effect on the line at 60.792 GHz is negligible.

GHz
151 - 164

	Allocation to Services		
	Region 1	Region 2	Region 3
MOD	151 - ~~164~~ 156		
		FIXED	
		FIXED-SATELLITE (space-to-Earth)	
		MOBILE	
MOD	~~151~~ 156 - ~~164~~ 158		
		~~FIXED~~	
		~~FIXED-SATELLITE (space-to-Earth)~~	
		~~MOBILE~~	
		EARTH EXPLORATION-SATELLITE (passive)	
MOD	~~151~~ 158 - 164		
		FIXED	
		FIXED-SATELLITE (space-to-Earth)	
		MOBILE	

Reason:

To provide protection for passive microwave sensors observing the atmospheric window at 157 GHz. The band around 157 GHz is vital for deriving water vapor profiles. Because of on-board transmitters operating at frequencies between 1.5 - 1.7 GHz, the central frequency must have room to be moved to avoid harmonics from these transmitters. The 157 GHz window provides higher quality data than windows in the 150 - 151 GHz or the 164 - 168 GHz bands.

CHAPTER VIII

Provisions Relating to Groups of Services and to Specific Services and Stations

ARTICLE 28

Space Radiocommunication Services Sharing Frequency Bands with Terrestrial Radiocommunication Services above 1 GHz

Section IV. Limits of Power Flux-Density from Space Stations

MOD **2558** **Mob-87**

b) The limits given in No. **2557** apply in the frequency bands listed in No. **2559** which are allocated to the following space radiocommunication services:

— meteorological-satellite service (space-to-Earth);

— space research service (space-to-Earth) (space-to-space);

— space operation service (space-to-Earth) (space-to-space);

— earth exploration-satellite service (space-to-Earth) (space-to-space);

for transmission by space stations where these bands are shared with equal rights with the fixed or mobile service, and to the

- radiodetermination-satellite service (space-to-Earth).

MOD **2559** **Mob-87**

1 525 - 1 530 MHz[1] (for Regions 1 and 3)
1 530 - 1 535 MHz[1] (for Regions 1 and 3, up to 1st January 1990)
1 670 - 1 690 MHz
1 690 - 1 700 MHz (on the territory of the countries mentioned in Nos. **740** and **741**)
1 700 - 1 710 MHz
2 025 - 2 110 MHz
2 200 ~~2 290~~ - 2 500 MHz
2 483.5 - 2 500 MHz

Reason:

Consequential modifications as a result of upgrading to primary allocations the space research (space-to-space), space operation (space-to-space) and earth exploration-satellite (Earth-to-space) (space-to-space) services.

ARTICLE 29

Special Rules Relating to
Space Radiocommunication Services

Section II. Control of Interference to
Geostationary-Satellite Systems

ADD 2613A

In the frequency bands 22.55-23.55 GHz and 25.25-27.5 GHz, geostationary space stations in the inter-satellite service shall have the following restriction:

Whenever the emissions from geostationary satellites are directed to other geostationary satellites, the angular separation between such geostationary satellites, as measured from the center of the Earth, shall be no more than 120°.

Whenever the emissions from geostationary satellites are directed towards space stations at distances from Earth greater than that of the geostationary-satellite orbit, the boresight of the antenna mainbeam of the geostationary satellite shall not be pointed within 15° of any point on the geostationary-satellite orbit or within 35° of the centre of the Earth.

Reason:

1. The reason for the proposed 120° geocentric angle restriction between geostationary satellites is to protect data relay satellites and permanent space station proximity link operations from interference caused by transmissions between geostationary satellite systems. Most low Earth-orbit spacecraft operate at an altitude between 300 and 1000 km. Current Data Relay Satellites (DRS) are capable of tracking spacecraft in altitudes up to 12,000 km, and interference protection should be provided for these spacecraft. To avoid harmful interference between inter-satellite service (ISS) (geostationary-to-geostationary) links and DRS links when low Earth-orbit spacecraft are at altitudes up to the 12,000 km, the angular separation between two geostationary space stations operating with each other would have to be no greater than approximately 100°. This angular separation is based upon an off-axis angle at the ISS station antenna (geostationary-to-geostationary) that assures sufficient antenna discrimination to protect both ISS (geostationary-to-geostationary) and DRS links. The antenna discrimination was calculated using the antenna pattern given in Figure 13 of CCIR Report 558.

Such a restriction would not permit fixed-satellite service (FSS) type systems with geostationary-to-geostationary links to have full Earth coverage with just three satellites. Therefore, to accommodate the use of geostationary-to-geostationary links by global FSS type systems using three satellites, we are proposing to limit the angular separation to no greater thatn 120°. In this case, interference would be avoided when low Earth-orbit spacecraft operate with altitudes up to 9,000 km.

2. The reason for the proposed 15° pointing restriction relative to the geostationary-satellite orbit and the 35° pointing restriction relative to the Earth is to protect geostationary inter-satellite

service space stations from interference due to inter-satellite service space stations communicating with space stations beyond the geostationary-satellite orbit.

CHAPTER XI

Maritime Mobile Service and Maritime Mobile-Satellite Service

ARTICLE 55

~~Operators~~[2] Certificates for Personnel of Ship Stations and Ship Earth Stations

Reason: To correct an oversight at the 1987 MWARC so as to align the title of the Article with Section titles.

Section I. General Provisions

SUP **3870**

Reason: The Certificates to be used will be held by a number of individuals aboard ship, making it no longer necessary to go to the trouble and expense to have photographs. The personnel who operate radio aboard ship will, for most administrations, not have that responsibility as a sole occupation, except in cases of distress. The radio license in the GMDSS may be an endorsement or a supplement to a deck officer's license so that a separate photo is not needed and in many cases would be duplicative. No. 3873 requires the date of birth.

(MOD) 3871 and 3872

Reason: Renumber as a consequence of SUP 3870.

MOD 3876 *d)* the issuing or recognizing administration.

Reason:

To eliminate the apparent conflict between Nos. 3860 Mob-87 and 3876.

Mob-87

Section IIA. Categories of Certificates for Personnel of Ship Stations and Ship Earth Stations Using the Frequencies and Techniques Prescribed in Chapter N IX and for Public Correspondence

MOD **3890A Mob-87** § 7A. (1) There are ~~four~~ two categories of certificates for personnel of ship stations and ship earth stations using the frequencies and techniques prescribed in Chapter N IX:

SUP **3890B**
Mob-87

SUP **3890C**
Mob-87

(MOD) **3890D**
Mob-87

~~c)~~ a) General Operator's Certificate;

(MOD) **3890E**
Mob-87

~~d)~~ b) Restricted Operator's Certificate.

(MOD) **3890F**
Mob-87

(2) The holder of one of the certificates specified in Nos. ~~**3890B**~~, ~~**3890C**~~, **3890D** and **3890E** may carry out the service of ship stations or ship earth stations using the frequencies and techniques prescribed in Chapter N IX.

Reason:

To delete the categories of certificates not recognized or used in the IMO Safety of Life At Sea Convention.

Mob-87

Section IIIA. Conditions for the Issue of Certificates for Personnel of Ship Stations and Ship Earth Stations Using the Frequencies and Techniques Prescribed in Chapter N IX and for Public Correspondence

SUP **3949A**
Mob-87

SUP **3949AA**
Mob-87

SUP **3949AB**
Mob-87

SUP **3949AC**
Mob-87

SUP **3949AD**
Mob-87

SUP **3949AE**
Mob-87

SUP 3949AF
Mob-87

SUP 3949AG
Mob-87

SUP 3949AH
Mob-87

SUP 3949AI
Mob-87

Reason:

The First-Class Radio Electronic Certificate is not a required part of the Global Maritime Distress and Safety System (GMDSS). Electronic maintenance aboard ship is only an option that will be subject to national decision according to the 1988 SOLAS Amendments. Most (two-thirds of shipping tonnage) of the maritime countries of the world have rejected on-board maintenance as a requirement by presenting protocol statements either to the Final Acts of the World Administrative Radio Conference for the Mobile Services (Mob-87), Geneva, 1987, or to the Final Acts of the Plenipotentiary Conference, Nice, 1989.

SUP 3949B
Mob-87

SUP 3949BA
Mob-87

SUP 3949BB
Mob-87

SUP 3949BC
Mob-87

SUP 3949BD
Mob-87

SUP 3949BE
Mob-87

SUP 3949BF
Mob-87

SUP 3949BG
Mob-87

SUP 3949BH
Mob-87

SUP 3949BI
Mob-87

Reason:

The Second-Class Radio Electronics Certificate, like the First-Class, is not a required part of the GMDSS and is not included as a requirement of the 1988 SOLAS amendments.

(MOD) 3949C
Mob-87

~~C.~~ A. General Operator's Certificate

(MOD) 3949CA
Mob-87

§ ~~18C.~~ 18A. The General Operator's Certificate is issued to candidates who have given proof of the knowledge and qualifications enumerated below:

NOC 3949CB
Mob-87

NOC 3949CC
Mob-87

NOC 3949CD
Mob-87

NOC 3949CE
Mob-87

(MOD) 3949D
Mob-87

~~D.~~ B. Restricted Operator's Certificate

(MOD) 3949DA
Mob-87

§ ~~18D.~~ 18B. The Restricted Operator's Certificate is issued to candidates who have given proof of the knowledge and qualifications enumerated below:

NOC 3949DB
Mob-87

NOC 3949DC
Mob-87

NOC 3949DD
Mob-87

NOC 3949DE
Mob-87

ARTICLE 56

Mob-87 **Personnel of Stations in the Maritime Mobile and the Maritime Mobile-Satellite Service**

Mob-87 **Section I. Personnel of Coast Stations and Coast Earth Stations**

NOC 3979 Mob-87 § 1. Administrations shall ensure that the staff on duty in coast stations and in coast earth stations are adequately qualified to operate the stations efficiently.

Reason:

To ensure adequate safety is provided.

Mob-87 **Section III. Class and Minimum Number of Personnel for Ship Stations and Ship Earth Stations Using the Frequencies and Techniques Prescribed in Chapter N IX and for Public Correspondence**

NOC 3987 Mob-87 § 4. Administrations shall ensure that the personnel of ship stations and ship earth stations are adequately qualified to enable efficient operation of the station, and shall take steps to ensure the operational availability and maintenance of equipment for distress and safety communications in accordance with the relevant international agreements.

NOC 3988 Mob-87 § 5. An adequately qualified person shall be available to act as a dedicated communications operator in cases of distress.

Reason:

To ensure adequate safety is provided by qualified individuals.

NOC 3989 Mob-87 § 6. The personnel of ship stations for which a radio installation is compulsory under international agreements and which use the frequencies and techniques prescribed in Chapter N IX shall, with respect to the provisions of Article 55, include at least:

Reason:

To ensure the Radio Regulations comport with the Convention on the Safety of Life At Sea.

SUP **3990**
Mob-87

MOD **3991**
Mob-87

~~b)~~ *a)* for stations on board ships which sail ~~within~~ beyond the range of ~~MF~~ VHF coast stations: a holder of a ~~first or second class radio electronic certificate or a~~ general operator's certificate;

MOD **3992**
Mob-87

~~c)~~ *b)* for ~~ship~~ stations on board ships which sail within the range of VHF coast stations: a holder of a ~~first or second class radio electronic certificate or a~~ general operator's certificate or a restricted operator's certificate.

Reason:

To align the Radio Regulations with the Convention on the Safety of Life at Sea and decisions of the International Maritime Organization.

NOC **3993**
Mob-87

§ 7. The personnel of ship stations for which a radio installation is not compulsory under international agreements and which use the frequencies and techniques prescribed in Chapter N IX shall be adequately qualified and certificated in accordance with the administration's requirements.

Reason:

To ensure adequate safety is provided by qualified individuals.

PROPOSALS WITH REGARD TO RESOLUTIONS AND RECOMMENDATIONS

MOD RESOLUTION NO. 517 ~~(HFBC-87)~~ (1992 WARC)

Transition from Double-Sideband (DSB) to Single-Sideband (SSB) Emissions in the HF Bands Allocated Exclusively to the Broadcasting Service

MOD The World Administrative Radio Conference for the ~~Planning of the HF Bands Allocated to the Broadcasting Service (Geneva, 1987),~~ Allocation of Spectrum (Spain, 1992),

ANNEX TO RESOLUTION NO. 517 (HFBC)

NOC **Procedure for the Transition from Double-Sideband (DSB) to Single-Sideband (SSB) Emissions in the HF Bands Allocated Exclusively to the Broadcasting Service**

MOD 1. The immediate introduction of SSB emissions is encouraged. ~~i.e., the transition period starts immediately.~~

MOD 2. All DSB emissions shall cease not later than ~~31 December 2015~~ 30 June 2007, at 2359 hours UTC (see also *resolves* 2 in the body of the Resolution).

NOC 3. SSB emissions shall comply with the characteristics specified in Appendix 45 to the Radio Regulations.

MOD 4. Until ~~31 December 2015~~ 30 June 2007, 2359 UTC, SSB emissions intended for reception by DSB receivers with envelope demodulation, as well as by SSB receivers with synchronous demodulation, shall have a carrier reduction of 6 dB relative to peak envelope power.

MOD 5. After ~~31 December 2015~~ 30 June 2007, 2359 hours UTC, only SSB emissions with a carrier reduction of 12 dB relative to peak envelope power.

MOD 6. Until ~~31 December 2015~~ 30 June 2007, 2359 hours UTC, whenever an administration replaces its DSB by an SSB emission, it shall ensure that the level of interference is not greater than that caused by its original DSB emission (see also Appendix 45 to the Radio Regulations and Recommendation 517 (HFBC-87)).

Reason:

The early use of SSB is essential in order to provide the HFBC spectrum needs while minimizing the impact upon the fixed service. The use of SSB increases spectrum efficiency with available technology and responds to *resolves* 2 of Resolution 517. Resolution 517 is on the 1992 WARC agenda as a part of Recommendation 511.

MOD

RESOLUTION No. 703

MOD

Relating to the Calculation Methods and Interference Criteria Recommended by the CCIR for Sharing Frequency Bands Between Space Radiocommunication and Terrestrial Radiocommunication Services or Between Space Radiocommunication Services[1]

MOD

The World Administrative Radio Conference, ~~Geneva, 1979~~ Spain, 1992,

considering

NOC a)

NOC b)

NOC c)

NOC d)

NOC e)

ADD f) that the CCIR XVIIth Plenary Assembly (Dusseldorf, 1990) has adopted a procedure for the approval of Recommendations between Plenary Assemblies;

(MOD) ~~f)~~ g) that the International Telecommunication Convention....

is of the opinion

MOD a) that subsequent ~~Plenary Assemblies~~ decisions of the CCIR are likely to make further changes in the recommended calculation methods and interference criteria;

SUP ~~b) that administrations should receive advance information of the drafts of the relevant CCIR recommendations;~~

(MOD) ~~c)~~ b) that the administrations should whenever possible....

SUP + ~~Replaces Resolution No. Spa2-6 of the World Administrative Radio Conference for Space Telecommunications, Geneva, 1971.~~

invites the CCIR

MOD a) to request its Study Groups to prepare, at their final meetings before the Plenary Assembly, a provisional list identifying relevant parts of ~~drafts of~~ revised and new CCIR Recommendations affecting the calculation methods and the interference criteria, and also those specific sections of the Radio Regulations to which they are applicable, relating to sharing between space radiocommunication and terrestrial radiocommunication services, or between space radiocommunication services;

MOD b) to request the Director of the CCIR to forward this list together with texts of ~~these drafts of~~ the revised and new Recommendations to administrations and to the IFRB within thirty days following the final Study Group meetings;

resolves that

MOD 1. the IFRB shall immediately distribute the information mentioned in invites b) above to all administrations, so that it reaches them as soon as possible before the convening of the subsequent Plenary Assembly. This should be accompanied by a notice indicating that the enclosed texts have already been approved by the CCIR or are subject to approval at the next CCIR Plenary Assembly;

MOD 2. a) each CCIR Plenary Assembly~~, having adopted any or all of the relevant Recommendations and approved the appropriate portions of the list mentioned in invites a) above,~~ should arrange for the Secretary-General to be informed of the list and those Recommendations which affect the appropriate calculation methods and the interference criteria to be employed;

NOC b)

NOC 3.

NOC 4.

NOC 5.

NOC 6.

NOC 7.

NOC 8.

NOC 9.

Reason: To bring Resolution 703 into line with the approval process adopted by the CCIR.

ADD

RESOLUTION NO. AAA

Relating to Implementation of Wind Profiler Radars at Frequencies Near 50 MHz, 400 MHz and 1 GHz

The World Administrative Radio Conference, Spain, 1992

referring to

a request to the Director of the CCIR and Chairman of the IFRB from the Secretary-General of the World Meteorological Organization, in May, 1989, for advice and assistance in the identification of appropriate frequencies near 50 MHz, 400 MHz, and 1 GHz in order to accommodate allocations and assignments for wind profiler radars;

considering

a) that many administrations plan to deploy wind profiler radars at sites dispersed over large geographical areas in order to improve meteorological predictions, support studies of the climate, and enhance the safety of navigation;

b) that the CCIR established Questions [AB/2] and 65/8 to promulgate the relevant studies;

c) that the characteristics of wind profiler radars differ substantially from those of other meteorological aids;

d) that some experiential wind profiler radars are operating in the 402-406 MHz band, but these radars have been found to cause harmful levels of interference to the COSPAS-SARSAT system for distress alerting in the 406.0-406.1 MHz band;

e) that a total wind profiler system may require frequencies not only in the 400 MHz region but also frequencies near 50 MHz and around 1 GHz;

f) Recommendation ZZZ;

considering further

that the International Maritime Organization has incorporated the COSPAS-SARSAT system in the Global Maritime Distress and Safety System;

recognizing

that frequencies in the 400 MHz region are preferred for measurements of winds at altitudes that are of the greatest general interest;

resolves

1. that the Administrative Council place on the agenda of the next competent world administrative radio conference the matter of establishing appropriate allocations for accommodation of wind profiler radars;

2. that the CCIR shall continue its studies of the characteristics and requirements of wind profiler radars and make Recommendations as to the technically suitable frequency bands and associated standards and frequency sharing criteria necessary for compatibility with the services that may be affected;

urges administrations

to avoid making frequency assignments to wind profiler radars in the 402-406 MHz band.

Reason:

To call for a future world administrative radio conference to consider frequency allocations to the wind profiler radar systems and continuance of current CCIR studies regarding wind profiler radars.

ADD

RESOLUTION NO. BBB

Relating to Implementation of the Changes in Allocation to the Broadcasting Service in the Bands Between 5 730 kHz and 19 680 kHz

The World Administrative Radio Conference, Spain, 1992,

considering

a) that parts of frequency bands between 5 730 kHz and 19 680 kHz that were previously allocated on an exclusive or shared basis to the fixed service or fixed and mobile service have been re-allocated to the broadcasting or amateur services;

b) that existing fixed and mobile assignments must be removed progressively from those re-allocated bands to make way for the broadcasting or amateur services;

c) that the assignments to be removed termed "displaced assignments", must be re-accommodated in the same frequency band;

recognizing

the difficulties facing administrations and the IFRB during the period of transition from the previous allocations to those made by this Conference;

resolves

1. that the transitional procedure in Annex A to this Resolution shall be used for the purpose of ensuring an orderly and equitable implementation of the changeover from the previous allocations to those made by this Conference;

2. that the provisions of No. 1242 and the associated provisions of Article 12 concerning the examination and recording in the Master Register of assignments in the bands between 5 730 kHz and 19 680 kHz allocated on an exclusive or shared basis to the fixed service or fixed and mobile service shall be suspended from 1 January 1995 to 30 June 1997;

3. that the interim procedure in Annex B to this Resolution shall be used for the purpose of dealing with any urgent new frequency assignments in the relevant bands during the period of suspension of the provisions of Article 17 as specified in resolves 2;

4. that the review procedure in Annex C to this Resolution shall be used for the purpose of examining any urgent new assignment notified during the period of suspension of the provisions of Article 12 as specified in resolves 2;

invites administrations

to cooperate by not submitting notices for assignments in the relevant bands during the period of suspension of the provisions of Article 12 as specified in resolves 2, except for urgent new assignments to be dealt with under the interim procedures of Annex B and C.

requests the IFRB

not to examine any notices in the relevant bands under Article 12 during the period of suspension of the provisions of that Article as specified in resolves 2, other than those notices requesting deletions of existing assignments.

ANNEX A TO RESOLUTION NO. BBB

Transitional Procedure for the Selection and Approval of Replacement Assignments

PART I - PREPARATORY PHASE

Section I. Preparation and Publication by the IFRB of Consolidated Proposals for Replacement Assignments

1. For the purpose of this Resolution, the term "displaced assignment" means a frequency assignment to a station in the fixed service or mobile service in the parts of the bands re-allocated from the fixed service or fixed and mobile service to the broadcasting or amateur services for which a replacement assignment shall be found in accordance with this Resolution. The expression "class of operation A (or B or C)" refers to the entry in column 7B of the Master Register (see RR 1222).

2. The Board, as soon as possible after completion of the procedure in Annex D, shall prepare consolidated proposals for replacements for all displaced assignments listed in the Provisional Section of the Master Register (see Annex D) in the bands between 5 730 kHz and 19 680 kHz which the World Administrative Radio Conference, Spain, 1992, has re-allocated from the fixed service or fixed and mobile service to the broadcasting or amateur services.

3. The displaced assignment shall be treated in the order of the date recorded in Column 2d of the Provisional Section of the Master Register. Furthermore, all displaced assignments which have the same Column 2d date shall be treated in the following order:

1) assignments for national use;

2) assignments for international use.

In the application of this provision, the displaced assignments shall be processed in batches without any priority being applied to the assignments of any administration.

4. The displaced assignments of class of operation C shall not be treated until all displaced assignments of class of operation A or B have been satisfied.

5. Displaced assignments of class of operation C shall be as far as possible evenly distributed throughout the bands that continue to be allocated to the fixed service or fixed and mobile service.

6. The Board, in complying with the provisions of this Section, shall for the purposes of protecting existing recorded assignments employ only the Master Register reconstructed in accordance with the procedure in Annex D.

7. The Board, on 1 July 1996, shall send to each administration a document listing all the assignments concerning that administration, identifying those that were recorded in the Provisional Section of the Master Register, and those proposed as replacements.

Section II. Examination and Approval of Proposed Assignments

8. Each administration, upon receipt of the document specified in paragraph 7, shall acknowledge receipt and shall then examine the proposed replacement assignments contained therein with regard to their acceptability, following which the administration shall advise the Board as soon as possible

of its agreement; or

which of the proposed assignments it finds unacceptable.

In the latter case, the administration shall inform the Board, as quickly as possible, of its reasons therefor.

9. The Board shall examine the responses under paragraph 8 and shall try, preferably by applying small adjustments, to satisfy the administration concerned with respect to the proposed assignments it found unacceptable. The Board shall do so in the following way:

the Board shall collect all responses received under paragraph 8 within six months after 1 July 1996, and process them together and without any priority being applied to the reply of any administration; and then

the Board shall collect all responses received under paragraph 8 in the period from six months to nine months after 1 July 1996, and then process this second batch in the same manner as described above for the first batch.

10. The procedure described in this Section shall terminate on 1 July 1997.

Section III. Subsequent Action by the Board

11. The Board, on termination of the procedure prescribed by Sections I and II of this Annex, shall insert in the Master Register all replacement assignments that have been agreed by administrations, with annotations to indicated:

that they shall have the status as provided in Annex D; and

their provisional nature in accordance with No. 1311.

12. The Board shall, for all assignments mentioned in paragraph 11, insert in Column 2d of the Master Register the appropriate date according to Annex D.

13. The Board shall then publish, in recapitulatory supplements to the International Frequency List, all replacement assignments made in accordance with the procedure prescribed in Part I of this Annex.

14. The Board, on publication of the supplements prescribed in paragraph 13, shall inform by telegram any administration having outstanding displaced assignments of class of operation A which have not been satisfied.

Section IV. Implementation of Article 12

15. As from 1 July 1997, the provisions of Article 12 shall apply to frequency bands allocated to the fixed service and fixed and mobile service between 5 730 kHz and 19 680 kHz.

16. Following that date, an administration, having been informed by the Board under paragraph 14 that certain of its displaced assignments have not been replaced under this transitional procedure, shall be free to select new assignments taking into account the assignments recorded in the Master Register under paragraph 11, and shall submit new notices to the Board in accordance with Article 12.

PART II - TRANSFER PHASE

Section V. Subsequent Action by Administrations

17. An administration, having received and accepted replacements for its recorded assignments that were displaced by decisions of the World Administrative Radio Conference, Spain, 1992, shall effect the changeover from the old to the new assignment not later than 1 July 2007.

18. An administration shall promptly inform the Board of the date on which the changeover from an old to a replacement assignment takes place. The Board shall remove from that replacement assignment the special symbol placed in accordance with No. 1311 (see paragraph 11) in the Master Register, thus indicating that it has been implemented, and shall enter the date of the change over in Column 2c. The date in Column 2c, originally recorded with the displaced assignment, shall be entered in the Remarks Column.

19. 1) An administration having effected the change to a replacement assignment of class of operation A, and having experienced harmful interference or having received a complaint of harmful interference involving another class of operation A assignment:

a) shall make every effort with any other administration concerned to resolve the problem, and, if unsuccessful,

b) may select and submit to the Board an alternative replacement assignment. On request from an administration, the Board shall assist in the application of provision 19.1b) or 19.2.

2) An administration, having effected the change to a replacement assignment of class of operation B and having experienced harmful interference for this class of operation, may select and submit to the Board an alternative replacement assignment. On request from an administration, the Board shall assist in the application of provision 19.1b) or 19.2.

20. Following a favourable finding by the Board on the replacement assignment selected under paragraph 19.1)b) or 19.2), the administration shall be entitled to retain the Column 2d date of the Master Register, against that assignment.

Section VI. Relevance of Dates in the Master Register

21. The relevance of the dates related to displaced assignments is referred to in Annex D and Article 12.

ANNEX B TO RESOLUTION NO. BBB

Interim Procedure Concerning Notices Relating to Assignments
in the Bands Between 5 730 kHz and 19 680 kHz
Allocated to the Fixed Service and Fixed and Mobile Service

1. During the period between 1 January 1995 and 30 June 1997, an administration, having an urgent requirement which cannot possibly be delayed until the end of that period, may notify a new assignment in the bands between 5 730 kHz and 19 680 kHz allocated on an exclusive

or shared basis to the fixed service. Such notices shall contain the information listed in the appropriate section of Appendix 1.

2. An administration submitting a notice in accordance with paragraph 1 above shall be deemed to accept that its assignment:

a) shall be of an interim nature; and

b) shall be subject to the review procedure contained in Annex C to this resolution and shall then be modified if necessary to conform to the results of that review; and

c) shall not cause harmful interference to any assignments recorded in the Master Register that are entitled to protection.

3. The Board, upon receipt of a complete notice under paragraph 1, shall examine it with respect to No. 1240 and shall return to the notifying administration any notice not complying with that provision together with the reasons for this action.

4. Notices in conformity with No. 1240 shall be included in a special section of the weekly circular, where they shall be annotated to show that they are subject to both the interim and review procedures contained in this Annex and Annex C to this Resolution respectively. Assignments notified under No. 1218 shall additionally be annotated to that effect.

5. The Board shall compile and maintain a Special List of all notices dealt with under paragraph 4.

ANNEX C TO RESOLUTION NO. BBB

Review Procedure Concerning Notices Relating to Assignments for Stations of the Fixed and Mobile Service in the Bands Between 5 730 kHz and 19 680 kHz

1. The Board, commencing on 1 July 1997, shall examine under the appropriate provisions of Article 12 all interim assignments contained in the Special List compiled in accordance with Annex B to this Resolution with a view to recording them in the Master Register.

2. For the purposes of this examination, interim assignments shall be processed without priority being given to the assignments of any administration; however, assignments notified under No. 1218 shall be treated first.

3. All interim assignments shall be examined by the Board with respect to the probability of harmful interference from or to assignments entered in the Master Register on a provisional basis as a result of the application of Annex A to this Resolution. Depending on the findings of the Board subsequent to this examination, further action shall be as follows:

4. Favourable finding with respect to paragraph 3 above

1) The interim assignments notified under No. 1218 shall be recorded in the Master Register, and the date 1 July 1997 shall be entered in Column 2d.

2) The other interim assignments shall be examined under No. 1242 with respect to frequency assignments recorded in the Master Register at the date of commencement of the interim procedure described in Annex B to the present Resolution. Depending on the findings of the Board, the appropriate provisions of Article 12 shall be applied. When such assignments are to be recorded, the date 1 July 1997 shall be entered in Column 2d.

5. Unfavourable finding with respect to paragraph 3 above

The Board shall, having regard to the class of operation of assignments, and the contents of the reconstructed Master Register, propose suitable replacement assignments and enter them on a provisional basis with the date of 1 July 1997 in Column 2d.

6. The Board shall, upon completion of this review, compile a Temporary List of recorded and proposed replacement assignments and publish it as an Annex to its weekly circular. A copy of this List, together with a national extract thereof, shall be sent to each administration having interim assignments in the Special List mentioned in paragraph 1 of this Annex.

7. An administration, upon receipt of the List mentioned in paragraph 6, shall consider the proposed replacements for its interim assignments and shall, within five months of the date of publication of the Temporary List, inform the Board whether the proposed assignments are acceptable. If the proposed assignments are not acceptable, the administration shall give the reasons therefor.

8. Upon acceptance of a proposed assignment, the administration shall indicate the latest date of bringing into use. This date shall be within one year of the publication of the Temporary List.

9. The Board shall examine the replies under paragraph 7 and shall try, if necessary by applying small adjustments, to satisfy the administration concerned with respect to the proposed assignments it found unacceptable and propose alternative frequencies. Simultaneously, the Board shall replace the appropriate provisional entry by the new proposed frequency.

10. If, on 1 July 1998, provisional entries made under paragraph 5 or 9 have not been accepted by the administration concerned, the Board shall replace these entries by the corresponding interim assign appropriately annotated. As from that date neither the Special List nor the Temporary List shall be taken into consideration.

11. An administration, having an interim assignment for which no acceptable replacement assignment has been found, shall be free to select a new replacement and shall forward a new notice under the provisions of Article 12. Upon request from an administration, the Board shall assist in the application of this provision.

ANNEX D TO RESOLUTION NO. BBB

Procedure for the Revision of Entries in the
Master International Frequency Register of
Displaced Assignments from Bands Re-Allocated to the
Broadcasting Service

1. The Board shall extract from the Master Register and shall, as soon as possible after 1 January 1993, forward to each administration an individual National List[1] of all assignments recorded in the Master Register on behalf of that administration or for which notices have been received prior to that date in the bands re-allocated to the broadcasting service (RR521B and RR528C).

2. Each administration, upon receiving the List mentioned in paragraph 1 above, shall so inform the Board by telegram. An administration not receiving its National List by 1 April 1993 shall promptly inform the Board, which shall forthwith send to that administration a further copy of the National List. The Board shall ensure that every administration has received the National List pertaining to its own assignments.

3. Each administration, after having acknowledged receipt of its National List, shall delete from it any of the entries no longer required and shall return its annotated National List to the Board as quickly as possible and in any event not later than 31 March 1994. The Board shall send to each administration an acknowledgement of receipt of its annotated National List.

4. On 1 October 1993, the Board shall publish a provisional section of the Master Register relating solely to the assignments in the bands allocated exclusively to the fixed and fixed and mobile service in the bands between 5 730 kHz and 19 680 kHz. This section shall contain all assignments shown in the National Lists as updated by administrations and those shown in the National Lists which have not been returned to the Board, excluding those assignments with an unfavourable finding with respect to No. 1240, without reference to No. 342. The assignments in this provisional section shall be annotated as follows:

1) all assignments in the parts of bands re-allocated to the broadcasting service shall bear the symbol "RES BBB" in Column 13c indicating that they are assignments for which replacement assignments shall be found in accordance with this Resolution, retaining the date and status afforded in 4.2) and 4.3), below;

2) for Lists returned to the Board, the date entered in Column 2d shall be same date contained in the Master Register for that assignment;

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[1] The Board shall determine by prior enquiries the number of copies of the National List to be sent to each administration. The National List shall be prepared in the format of the International Frequency List but the form in which the List is forwarded may, at the request of individual administrations and with the agreement of the Board, be varied to suit different circumstances.

3) for Lists not returned to the Board, the date entered in Column 2d shall be 1.1.95.

5. As soon as possible after 1 January 1995, the Board shall:

1) publish a supplement to the provisional section of the Master Register containing those assignments for which notices were received between 1 January 1993 and 31 December 1994 and recorded in the Master Register;

2) send to administrations a copy of their National list;

3) incorporate in the Master Register the provisional section mentioned in paragraph 4 including the assignments in paragraph 5.1) above in replacement of the corresponding entries in the frequency bands concerned.

6. Following completion of the action described in this Annex, the Board shall publish a report showing the results obtained from the operation of this procedure.

Reason:

To provide a reaccommodation procedure for those services displaced by additional allocations for the HF broadcasting service.

ADD

RESOLUTION NO. CCC

Date of Entry Into Force of the Aeronautical Mobile Off-Route (OR) Channelling and Allotment Arrangements

The World Administrative Radio Conference, Spain, 1992,

considering

a) that the channelization and frequency separations of the bands allocated exclusively to the aeronautical mobile off-route (OR) service contained in Appendix 26 to the Radio Regulations have not been changed since the Administrative Radio Conference, Geneva, 1959;

b) that the Plenipotentiary Conference, Nice, 1989, adopted Resolution PL-B/2 directing the IFRB to develop a channelling arrangement for the aeronautical mobile OR service and that the IFRB has developed a channelling arrangement based on 3-kHz separation between channels and has also provided an allotment arrangement based on administrations' requirements;

c) that Resolution PL-B/2 resolves that administrations should change to the new frequencies on 0001 hours UTC 31 December 1992 and that this date was subject to confirmation by this Conference;

d) that the frequency spectrum should be used in the most efficient way possible;

e) that the new channelling and allotment arrangements provide for more efficient use of the frequency spectrum;

f) that a considerable number of aircraft and aeronautical station frequency assignments will be transferred from existing frequency assignments to the new frequencies designated in the channelling and allotment arrangements;

g) that the transfer of frequency assignments should be made with the least disruption of service and in a manner to avoid harmful interference during the implementation period:

h) that administrations will have a considerable task to change to the new frequencies and notify their new assignments;

noting

that Recommendation No. 406 (MOB-87) further addresses certain problems regarding the inclusion of all members of the Union communications requirements in the aeronautical mobile off-route (OR) service frequency bands contained in Appendix 26 to the Radio Regulations and that these problems will be addressed at a future conference;

is of the opinion

that the requirements of all members of the Union have been considered and included in the allotment arrangement provided by the IFRB;

further noting

that although some of the technical and operational criteria contained in Appendix 27 Aer2 to the Radio Regulations are not applicable in all aspects of operations relating to the aeronautical OR service, there are certain provisions that may be applied to the aeronautical OR service on an interim basis;

resolves

1. that the channelling arrangement and allotment arrangement prepared by the IFRB will become effective as of 1 March 1994;

2. that on 1 March 1994 the frequencies and allotment plan appearing in Appendix 26 to the Radio Regulations shall be replaced by the channelling and allotment arrangements prepared by the IFRB;

3. that administrations take all the necessary measures to convert to single-sideband operation as soon as possible; discontinue double-sideband emissions as early as possible, and, in any event, not later than 1 March 1996;

4. that the classes of emissions A1A, F1B, F7B, H2B, J2B, J2D, J3E, J7B, and J9X only shall be authorized as of 1 March 1996, and that use of these emissions should, on an interim basis, be governed by Nos. 27/10 and 27/11 of Appendix 27 Aer2 to the Radio Regulations;

resolves to recommend

that appropriate technical and operational provisions replacing those contained in Appendix 26 to the Radio Regulations should be developed for consideration by a competent world administrative radio conference addressing Recommendation 406;

invites the CCIR

to develop appropriate technical criteria applicable to aeronautical OR service operations.

Reason:

To implement the new channelling arrangement being developed by the IFRB.

ADD

RECOMMENDATION NO. ZZZ

Relating to Interim Implementation of Wind Profiler Radars at Frequencies Near 400 MHz

The World Administrative Radio Conference, Spain, 1992

considering

a) that many administrations plan to deploy wind profiler radars at sites dispersed over large geographical areas in order to improve meteorological predications, support studies of the climate and enhance the safety of navigation;

b) that the CCIR is conducting studies under Questions [AB/2] and 65/8 to determine the characteristics and requirements of wind profiler radars in order to make Recommendations as to suitable frequency bands and associated standards and frequency sharing criteria necessary for compatibility with the services that may be affected;

c) that frequencies in the 400 MHz region are preferred for measurements of winds at altitudes that are of the greatest general interest, but that implementation of wind profiler radars in the 402-406 MHz band poses an unacceptable risk of interference to the COSPAS-SARSAT system for distress alerting;

d) that in relation to the need to protect satellite receivers, operation of wind profiler radars in accordance with No. 342 requires special attention to the cumulative effects of all such operations in the large areas that are within view of the satellites;

e) Resolution AAA:

noting

that some administrations have found that wind profiler operations near [4XX MHz] will be compatible with existing systems;

recommends

that administrations consider frequencies near [XXX MHz] in making assignments to wind profiler radars until such time as the CCIR develops applicable Recommendations.

Reason:

To provide for the interim implementation of wind profiler radar systems and the continuance of current CCIR studies regarding wind profiler radars, while providing protection for the COSPAS-SARSAT system.

INTERNATIONAL TELECOMMUNICATION UNION

ADMINISTRATIVE COUNCIL

45th SESSION — GENEVA — JUNE 1990

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PLENARY MEETING

Note by the Secretary-General

CONSULTATION REGARDING WARC-92

I have the honour to transmit for consideration by the Administrative Council copy of Circular Telegram No. A87, addressed to the Members of the Union on 21 June 1990.

Pekka TARJANNE
Secretary-General

Annex:1

ANNEX

COPY OF CIRCULAR TELEGRAM No. A87

ADDRESSED TO MEMBERS OF THE ITU ON 21 JUNE 1990

CTITU A87

AAA THE ADMINISTRATIVE COUNCIL NOW IN SESSION HAS ESTABLISHED AN AGENDA FOR THE WORLD ADMINISTRATIVE RADIO CONFERENCE FOR DEALING WITH FREQUENCY ALLOCATIONS IN CERTAIN PARTS OF THE SPECTRUM (WARC-92) AND PROPOSES THE FOLLOWING TEXT:

CONSIDERING, INTER ALIA,

A) THAT RESOLUTION NO. PL-B/1 OF THE PLENIPOTENTIARY CONFERENCE, NICE, 1989, SCHEDULED A WORLD ADMINISTRATIVE RADIO CONFERENCE FOR DEALING WITH FREQUENCY ALLOCATIONS IN CERTAIN PARTS OF THE SPECTRUM (WARC-92) TO BE CONVENED IN SPAIN IN THE FIRST QUARTER OF 1992 FOR A PERIOD OF FOUR WEEKS AND TWO DAYS;

B) THAT IN ACCORDANCE WITH RESOLUTION NO. PL-B/1 OF THE PLENIPOTENTIARY CONFERENCE, NICE, 1989, THE AGENDA OF THE WARC-92 SHALL TAKE INTO ACCOUNT THE RESOLUTIONS AND RECOMMENDATIONS OF WARC HFBC-87, WARC MOB-87 AND WARC ORB-88 RELATING TO FREQUENCY ALLOCATIONS;

C) THAT, PURSUANT TO RESOLUTION NO. PL-B/1, THE WARC-92 MAY IN ADDITION CONSIDER DEFINING CERTAIN NEW SPACE SERVICES AND CONSIDER ALLOCATIONS TO THESE SERVICES IN FREQUENCY BANDS ABOVE 20 GHZ;

D) THAT THE PLENIPOTENTIARY CONFERENCE, NICE, 1989, HAVING RECOGNIZED THAT THE PLAN FOR THE AERONAUTICAL MOBILE (OR) SERVICE CONTAINED IN APPENDIX 26 OF THE RADIO REGULATIONS REQUIRES APPROPRIATE ADJUSTMENTS, ADOPTED RESOLUTION NO. PL-B/2;

E) THAT IN ACCORDANCE WITH RESOLUTION NO. PLEN/8 OF THE PLENIPOTENTIARY CONFERENCE, NICE, 1989, THE WARC-92 SHOULD CONSIDER THE PROVISIONS OF ARTICLES 55(REV.) AND 56(REV.) OF THE RADIO REGULATIONS, AS AMENDED BY WARC MOB-87,

CONSIDERING FURTHER THAT THE RADIO SPECTRUM TO BE CONSIDERED BY THIS CONFERENCE IS ALREADY ALLOCATED TO CERTAIN

WELCOMING THE INVITATION OF THE ADMINISTRATION OF SPAIN TO THE ITU TO HOLD WARC-92 IN THAT COUNTRY;

RESOLVES

1. THAT THE WORLD ADMINISTRATIVE RADIO CONFERENCE FOR DEALING WITH FREQUENCY ALLOCATIONS IN CERTAIN PARTS OF THE SPECTRUM (WARC-92) BE CONVENED IN SPAIN FROM 3 FEBRUARY 1992 FOR A PERIOD OF FOUR WEEKS AND TWO DAYS;

2. THE AGENDA FOR WARC-92 SHALL BE AS FOLLOWS:

- ON THE BASIS OF PROPOSALS BY ADMINISTRATIONS AND TAKING ACCOUNT OF REPORTS FROM THE IFRB AND THE CCIR:

2.1 TO CONSIDER DEFINITIONS FOR CERTAIN NEW SPACE APPLICATIONS AND TO REVIEW THE RELEVANT PROVISIONS OF ARTICLE 1;

2.2 TO REVIEW THE PROVISIONS OF ARTICLE 8, TAKING ACCOUNT OF CONSIDERING FURTHER ABOVE, WITH A VIEW TO:

2.2.1 THE CONSIDERATION OF POSSIBLE ALLOCATIONS OF FREQUENCY BANDS ABOVE 20 GHZ TO THE NEW SPACE SERVICE APPLICATIONS[1];

2.2.2 - THE POSSIBLE EXTENSION OF THE FREQUENCY SPECTRUM ALLOCATED EXCLUSIVELY TO HF BROADCASTING, AS INDICATED IN RECOMMENDATION NO. 511(HFBC-87);

2.2.3 THE CONSIDERATION OF THE ALLOCATION OF FREQUENCY BANDS TO THE BROADCASTING-SATELLITE SERVICE AND THE ASSOCIATED FEEDER LINKS:

---

1 COMMUNICATIONS WITH MANNED SPACE VEHICLES MAY BE DEFINED AS A NEW SPACE APPLICATION WHICH MAY REQUIRE THE INDICATION OF THE SPACE SERVICE AND THE FREQUENCY BANDS THAT THIS SERVICE MAY USE FOR THIS PURPOSE.

A) FOR THE BROADCASTING-SATELLITE SERVICE (SOUND) IN THE RANGE 500 - 3 000 MHZ, AS INDICATED IN RESOLUTION 520(ORB-88), INCLUDING THE ACCOMMODATION OF COMPLEMENTARY TERRESTRIAL SOUND BROADCASTING USES WITHIN THIS ALLOCATION;

B) FOR WIDE RF-BAND HIGH DEFINITION TELEVISION ON A WORLD-WIDE BASIS, AS INDICATED IN RESOLUTION 521(ORB-88) GIVING CONSIDERATION TO THE RESULTS OF CCIR STUDIES CARRIED OUT IN ACCORDANCE WITH THIS RESOLUTION;

2.2.4 THE CONSIDERATION OF AN ALLOCATION OF FREQUENCY BANDS TO THE MOBILE AND MOBILE-SATELLITE SERVICES AND ASSOCIATED FEEDER-LINKS:

A) IN THE APPROXIMATE RANGE 1 - 3 GHZ, AS INDICATED IN RESOLUTION NO. 208(MOB-87);

B) FOR THE DEVELOPMENT IN THE APPROXIMATE RANGE 1 - 3 GHZ OF A WORLD-WIDE SYSTEM OF PUBLIC CORRESPONDENCE WITH AIRCRAFT, AS INDICATED IN RECOMMENDATION NO. 408(MOB-87), OR DESIGNATE FOR THIS USE A BAND ALREADY ALLOCATED TO THE MOBILE SERVICE IN THE SAME RANGE;

C) FOR THE DEVELOPMENT OF THE INTERNATIONAL USE OF THE MOBILE SERVICE FOR FUTURE PUBLIC LAND MOBILE TELECOMMUNICATION SYSTEMS, AS INDICATED IN RECOMMENDATION NO. 205(MOB-87), OR DESIGNATE FOR THIS USE A BAND ALREADY ALLOCATED TO THE MOBILE SERVICE;

D) CONSIDER POSSIBLE ALLOCATIONS OF UP TO 5 MHZ OF A FREQUENCY BAND BELOW 1 GHZ TO LOW-ORBIT SATELLITES ON THE BASIS OF APPROPRIATE SHARING CRITERIA;

2.2.5 THE CONSIDERATION OF THE ALLOCATION OF THE FREQUENCY BAND 14.5 - 14.8 GHZ TO THE FIXED-SATELLITE SERVICE (EARTH-TO-SPACE) WITH DUE PROTECTION OF ASSIGNMENTS APPEARING IN APPENDIX 30A OF THE RADIO REGULATIONS, AND TO TAKE ACCOUNT OF SERVICES TO WHICH THESE FREQUENCY BANDS ARE CURRENTLY ALLOCATED;

2.2.6 THE EXAMINATION OF THE FREQUENCY BANDS 2 025 - 2 110 MHZ AND 2 200 - 2 290 MHZ FOR THE SPACE OPERATIONS AND SPACE RESEARCH SERVICES, AS INDICATED IN RECOMMENDATION 716(ORB-88);

2.2.7 THE CONSIDERATION OF FOOTNOTES RELATING TO THE RADIODETERMINATION-SATELLITE SERVICE IN THE FREQUENCY RANGE 1.6 - 2.5 GHZ WITH THE VIEW TO HARMONIZING THEM AND ALLOWING ADMINISTRATIONS TO REVISE THE STATUS OF THEIR RESPECTIVE ALLOCATIONS TO THIS SERVICE AND TO REVIEW THE SHARING CRITERIA AS INDICATED IN RESOLUTION NO. 708(MOB-87);

2.2.8 THE EXAMINATION OF THE FOOTNOTES RR 635 AND RR 797B;

2.3 TO CONSIDER THE PROVISIONS OF ARTICLES 55(REV.) AND 56(REV.) OF THE RADIO REGULATIONS WHICH CONCERN THE MANDATORY CARRIAGE ON BOARD SHIPS OF PERSONNEL CERTIFICATED FOR THE ON-BOARD MAINTENANCE OF SHIPBORNE RADIO AND ELECTRONIC EQUIPMENT, AS INDICATED IN RESOLUTION NO. PLEN/8[1];

2.4 TO CONSIDER MINIMUM MODIFICATIONS TO ARTICLE 12 OF THE RADIO REGULATIONS AS A RESULT OF ACTIONS TAKEN WITH REGARD TO APPENDIX 26, AS INDICATED IN RESOLUTION NO. PL-B/2[1];

2.5 TO CONSIDER APPROPRIATE ACTION, IN LIGHT OF THE DECISION OF THE CONFERENCE RELATING TO DEFINITIONS IN ACCORDANCE WITH RESOLUTION NO. PL/10[1];

2.6 TO MAKE SUCH CONSEQUENTIAL CHANGES AND AMENDMENTS IN THE RADIO REGULATIONS AS MAY BE NECESSITATED BY THE DECISIONS OF THE CONFERENCE;

2.7 TO DEVELOP NEW RECOMMENDATIONS AND RESOLUTIONS IN RELATION TO THE AGENDA OF THE CONFERENCE INCLUDING METEOROLOGICAL AIDS SERVICE IN FREQUENCY BANDS BELOW 1000 MHZ AND PRESENT ALLOCATIONS TO SPACE SERVICES ABOVE 20 GHZ WHICH WERE NOT PLACED ON THIS AGENDA;

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1 PLENIPOTENTIARY CONFERENCE, NICE, 1989

2.8 TO CONSIDER PROBLEMS ASSOCIATED WITH THE USE OF THE FREQUENCY BANDS IN THE RANGE 401 - 403 MHZ BY THE METEOROLOGICAL SATELLITE AND EARTH EXPLORATION SATELLITE SERVICES WITH THE VIEW TO RECOMMEND THEIR CONSIDERATION BY THE NEXT COMPETENT ADMINISTRATIVE RADIO CONFERENCE;

2.9 TO CONSIDER, REVISE AS NECESSARY, AND TAKE OTHER APPROPRIATE ACTION UPON THE RELEVANT RECOMMENDATIONS AND RESOLUTIONS;

2.9.1 TO SAFEGUARD THE INTERESTS OF SERVICES THAT MAY BE AFFECTED BY CHANGES TO THE TABLE OF FREQUENCY ALLOCATIONS BY ADOPTING APPROPRIATE SHARING CRITERIA WHEN REQUIRED AND TO ADOPT APPROPRIATE SCHEDULE FOR THE ENTERING INTO FORCE OF THE DECISIONS ADOPTED BY THE CONFERENCE;

2.9.2 TO REVIEW RESOLUTION NO. 703 IN THE LIGHT OF THE PROCEDURE ADOPTED BY THE XVIITH CCIR PLENARY ASSEMBLY (RESOLUTION PLEN/75) FOR THE APPROVAL OF RECOMMENDATIONS IN THE INTERVAL BETWEEN PLENARY ASSEMBLIES;

2.10 TO IDENTIFY THE FINANCIAL IMPLICATIONS OF THE DECISIONS OF THE CONFERENCE, TAKING INTO ACCOUNT THE UNION'S BUDGETARY PROVISIONS, AND AS NECESSARY TO SUBMIT A STATEMENT THEREON TO THE ADMINISTRATIVE COUNCIL IN ACCORDANCE WITH ARTICLE 80 OF THE INTERNATIONAL TELECOMMUNICATION CONVENTION AND RESOLUTION NO. 48 OF THE PLENIPOTENTIARY CONFERENCE, NAIROBI, 1982,

INVITES

1. THE CCIR TO PREPARE THE TECHNICAL AND OPERATIONAL BASES FOR THE CONFERENCE AND TO SUBMIT TO ADMINISTRATIONS A REPORT SETTING OUT THE RESULTS OF ITS WORK AT LEAST EIGHT MONTHS PRIOR TO THE OPENING OF THE CONFERENCE;

2. THE IFRB TO PROVIDE TECHNICAL ASSISTANCE FOR THE PREPARATION AND ORGANIZATION OF THE CONFERENCE AND TO SUBMIT TO ALL ADMINISTRATIONS A REPORT ON RESULTS WITH RESPECT TO THE APPROPRIATE ABOVE AGENDA ITEMS AT LEAST TEN MONTHS PRIOR TO THE OPENING OF THE CONFERENCE,

INSTRUCTS THE SECRETARY-GENERAL

1. TO MAKE ALL THE ARRANGEMENTS NECESSARY FOR HOLDING THE CONFERENCE;

2. TO COMMUNICATE THIS RESOLUTION TO ICAO, IMO, WMO AND TO OTHER CONCERNED INTERNATIONAL ORGANIZATIONS.

BBB IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF ARTICLE 54 OF THE CONVENTION, ALL MEMBERS OF THE UNION ARE INVITED TO INDICATE THEIR CONCURRENCE WITH THE AGENDA, DATES AND PLACE OF THE CONFERENCE.

CCC ALL MEMBERS ARE REQUESTED TO REPLY BY FAX OR TELEX TO THE CHAIRMAN OF THE COUNCIL IN GENEVA BEFORE FRIDAY 20 JULY 1990 AT 2359 UTC.

A. PH. DJIWATAMPU, CHAIRMAN
BURINTERNA
NNNN

Appendix C--FCC Proposals Versus Informal Working Group 1's (HF) Proposals

FCC Proposal* (1)	Working Group Proposal** (2)	Difference (3)=(2)-(1)
No Proposal	4750-4850/4850-4995 kHz*** (245 kilohertz) and delete footnote 503 from this band	245 kilohertz
5900-5950 kHz amateur realignment (50 kilohertz)	5800-5950 kHz amateur realignment (150 kilohertz)	100 kilohertz
6900-7200 kHz (300 kilohertz)	6950-7250 kHz (300 kilohertz)	0
7200-7400 kHz (200 kilohertz)	7250-7450 kHz (200 kilohertz)	0
7400-7525 kHz (125 kilohertz)	7450-7750 kHz (300 kilohertz)	175 kilohertz
9350-9500 kHz (150 kilohertz)	9250-9500 kHz (250 kilohertz)	100 kilohertz
No Proposal	9900-9940 kHz (40 kilohertz)	40 kilohertz
No Proposal	10200-10400 kHz (200 kilohertz)	200 kilohertz
11550-11650 kHz (100 kilohertz)	11500-11650 kHz (150 kilohertz)	50 kilohertz
No Proposal	12050-12150 kHz (100 kilohertz)	100 kilohertz
No Proposal	13480-13600 kHz (120 kilohertz)	120 kilohertz

There are no differences in proposals in the bands above 13600 kHz.

* The Commission proposes to require RSSB emissions in all bands except 7200-7400 kHz.

** Stations operating with RSSB emissions in accordance with Appendix 45 shall be given a priority status.

*** Stations in the defined tropical zone utilizing transmitters with power levels not in excess of 47 dBW (50 kW) in the band 4750-4995 kHz will be assigned a priority in the frequency planning procedure (World Plan) to be developed at WARC-HFBC-93.

Appendix D--Parties Filing Comments or Reply Comments to the Notice of Inquiry

Advanced Mobilecomm, Inc.
Advanced Television Systems Committee
Adventist Broadcasting Service, Inc.
Aeronautical Radio, Inc. and Air Transport Association of America
Aerospace & Flight Test Radio Coordinating Council
AFRISPACE, Inc.
Aircraft Owners and Pilots Association
American Institute of Merchant Shipping
American Mobile Satellite Corporation
American Petroleum Institute
American Radio Relay League
American Technical Systems Committee
American Telephone and Telegraph Company
Amtech World Corporation
ARNAV Systems, Inc.
Associated Public-Safety Communications Officers, Inc.
Association for Broadcast Engineering Standards, Inc.
Association of American Railroads
Association of Maximum Service Telecasters, Inc.
Association of North American Radio Clubs
Dennis Atkeson
State of California, Department of General Services, Telecommunications Division
California Public-Safety Radio Association, Inc.
Anna L. Case
Brian Cassidy
CBS, Inc.
Christian Science Monitor Syndicate, Inc.
Communications Satellite Corporation
Digital Microwave Corporation
Energetics Satellite Corporation
Ericsson Corporation
F Corporation
Family Stations
Gary Gaulin
GEC Plessey Telecommunications, Ltd. and Stromberg-Carlson Corporation
George Mason University Foundation, Inc.
Geostar Corporation
Global-Wulfsberg Systems
GTE Service Corporation
Harris Corporation--Farinon Division
High Adventure Ministries
IDB Communications Group, Inc.
International Monitoring Association for Students & Teachers
George Jacobs & Associates, Inc.
Michael R. Kelley
Benjamin Krepp
David Kurlander

KUSW Worldwide Radio
Litel Telecommunications Corporation
Chick Longman
Los Angeles County Sheriff's Department
McCaw Cellular Communications, Inc.
Mobile Marine Radio, Inc.
Motorola, Inc.
National Academy of Sciences--National Research Council's Committee on Radio Frequencies
National Aeronautics and Space Administration
National Association of Broadcasters
National Association of Shortwave Broadcasters
National Association of State Telecommunications Directors
National ITFS Association
National Public Radio
Northern Telecom, Inc.
NYNEX Corporation
Ohio Educational Broadcasting Network Commission
Ohio University Avionics Engineering Center
Orbital Communications Corporation
Qualcomm, Inc.
Radio-Electronics Officers Union and American Radio Association
Radio Technical Commission for Maritime Services
Rockwell International Corporation
Daniel L. Ross
Satellite CD Radio, Inc.
Sea-Land Service, Inc.
Shannondale Wireless
South Carolina Division of Information Resource Management
Super Talkers of Pennsylvania
Leslie Taylor Associates
Telecommunications Industry Association, Mobile Communications Division
Telecommunications Systems
United Parcel Service, Inc.
University of Maryland
State of Utah, Department of Public Safety, Telecommunications Division
Utilities Telecommunications Council
Voice of America
Voice of Hope World Network
Volunteers in Technical Assistance, Incorporated
Wild Goose Association
Wireless Cable Association
World Christian Broadcasting Corporation
World Radio TV Handbook
Dr. Philip R. Yant

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